

FINANCE AND ADMINISTRATION CABINET

Kentucky Public Pensions Authority

(Amended at ARRS Committee)

105 KAR 1:140. Employer's administrative duties.

RELATES TO: KRS ~~16.505-16.652, 16.583, 16.645(18), 18A.095, 18A.105, 61.505-61.705~~~~[61.546, 61.552(23), 61.560, 61.565, 61.569, 61.597, 61.598, 61.637(17), 61.675, 61.685, 61.702], 78.510-78.852~~~~[78.545(33), (37), 78.616, 78.625, 78.652], 26 U.S.C. 401(a)(17), [31], 403(b), 408(a), (b), [414(g)(6), 457(b)], 3121(b)(10), 41 C.F.R. Part 105-64, [Pub. L. 104-191, Pub. L. 111-5, Div. A, Title XIII, Div. B, Title IV, 26 C.F.R. 31.3121(b)(10) 2, 29 C.F.R. 519.2(a)], 42 C.F.R. 423.504(b)(4)(vi), 45 C.F.R. Parts 160, 162, 164~~
STATUTORY AUTHORITY: KRS ~~61.505(1)(g)~~~~[16.645(18)], 61.565~~~~[61.645(9)(e)], 61.675, [78.545(33)], 78.625, 78.635~~

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS ~~61.505(1)(g)~~ authorizes the Kentucky Public Pensions Authority~~[61.645(9)(e)]~~ requires the Board of Trustees of the Kentucky Retirement Systems~~] to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with necessary or proper in order to carry out the provisions of]~~ KRS 16.505 to 16.652, ~~61.505, 61.510 to 61.705, and 78.510 to 78.852. Employers participating in the Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System are required by KRS 16.545, 16.645~~~~(18), 61.543, 61.560, 61.565, 61.637, 61.675, [78.545(33), and 61.702, 78.5536, 78.5540, 78.610, 78.615, 78.625, and 78.635~~ to make contributions to the ~~retirement] systems, [to] report creditable compensation and other information that the systems may require, to the Kentucky Public Pensions Authority~~~~[retirement systems and other information that the Board of Trustees may require], and perform other duties and responsibilities as participating employers. [26 U.S.C. 401(a)(17) places a limit on the amount of creditable compensation on which contributions may be made.] This administrative regulation sets out the administrative duties and reporting requirements for all participating employers~~~~[agencies].~~

Section 1. Definitions.

- (1) "Classify" means to report an employee as full-time, part-time, seasonal, temporary, emergency, probationary, volunteer, intermittent, or interim.
- (2) "Confidential member account information" means information or data that relates directly or indirectly to a member's account at the agency that is specific or unique to the member.
- (3) "County Fee Employer" means county employers who report to the Kentucky Personnel Cabinet due to the population of their county.
- (4) "Employer Self-Service Web site" or "ESS Web site" means a secure agency Web site that:
 - (a) Allows employers to access its online employer account and employee information, download and submit forms, and provides other employer resources; and
 - (b) Allows some employers to perform reporting and contribution functions.
- (5) "End of Year Report" or "EOY Report" means a school board's list of the classified participating and non-participating employees who were reported to the County Employees Retirement System during the school year that is used to average monthly work hours and determine service credit.
- (6) "ESS Employer" means all employers as defined by KRS 16.505(3), 61.510(6), and 78.510(7), except a KHRIS Employer or a County Fee Employer.
- (7) "Excess contributions" means employee contributions that exceed what is required by statute.
- (8) "KHRIS" means Kentucky Human Resource Information System.
- (9) "KHRIS Employer" means employers subject to KRS Chapter 18A.
- (10) "Non-renewable" means a position created for a fixed period of time that cannot be filled, renewed, or reused after the fixed period of time has lapsed.
- (11) "Personal identifiable information" or "PII" is defined by 41 C.F.R. Part 105-64.
- (12) "Protected health information" or "PHI" is defined by 45 C.F.R. 160.103.
- (13) "Supplemental Report" means a record-keeping tool used by County Fee Employers to report additional non-monetary monthly reporting details that cannot be submitted through KHRIS.

Section 2. Kentucky Public Pensions Authority Employer Reporting Manual. All employers shall follow the requirements and guidelines provided in the Kentucky Public Pensions Authority Employer Reporting Manual.

Section 3. ESS Web site and the Agency's Secure Email Portal.

- (1) Each employer shall submit a valid Form 7851, Data Use and Reporting Agreement, completed by the agency head or agency reporting official prior to participating in the systems.
- (2) Each employer shall submit a valid Form 7072, Reporting/Balancing Employer Acknowledgment, completed by the agency head or agency reporting official if it needs to designate a third-party entity to report employee information on behalf of the employer.
- (3) Each employer shall have an employer administrator to grant and revoke access and security levels to the employer's ESS Web site users. The employer shall submit a valid Form 7071, Employer Self-Service Employer Administrator Account Creation Request, to designate an employer administrator.
 - (a) The ESS Web site users designated by the employer administrator shall include a primary reporting official and an agency head, and may also include human resources contacts.
 - (b)
 1. Semi-annually, the ESS Web site shall require the primary reporting official to verify contact information for the employer administrator, primary reporting official, human resources contact, and the agency head.
 2. If ~~at any time~~ there are changes to contact information in this paragraph or other account information changes, the primary reporting official shall update the ESS Web site with the new information.
 - (c) An employer is responsible for all acts and omissions of authorized ESS Web site users, including the employer administrator and any ESS Web site user designated by the employer administrator in accordance with paragraph (a) of this subsection.
 - (d) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the ESS Web site in a confidential manner and does not release them to any other person.
- (4) The agency shall notify employers of the Web address for the ESS Web site and shall notify employers if the Web address of the ESS Web site changes.
- (5) Employers required to submit reports through the ESS Web site, as ~~established~~ ~~indicated~~ in Sections (4) through (5) of this administrative regulation, shall follow the instructions for submission as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. Reports shall be submitted by:
~~[(1)] [Each employer shall submit the reports required under KRS 61.675 and KRS 78.625 electronically using the secure Kentucky Retirement Systems' Employer Self-Service Web site by:]~~

- (a) The Enter Report Details Module, through a series of ESS Web site screens used to enter monthly report details; or
- (b) The Upload Detail File Module through an [Uploading an] electronic file upload on the ESS Web site.
 - 1. To submit reports in the Upload Detail File Module, the employer's electronic file format ~~shall~~ ~~first~~ ~~meet~~ [that meets] the requirements of the Strategic Technology Advancements for the Retirement of Tomorrow (START) Employer Contribution Record Layout as provided in the Kentucky Public Pensions Authority Employer Reporting Manual. The employer shall submit a test file to the ~~agency retirement systems~~, which shall be reviewed for compliance with the requirements of the START Employer Contribution Record Layout.
 - 2. If the test file is in compliance with the requirements of the START Employer Contribution Record Layout, the ~~agency retirement systems~~ shall certify the electronic file and inform the employer of the month when the employer may begin using the Upload Detail File Module [electronic file] for submitting reports.
 - 3. If the test file is not in compliance with the requirements of the START Employer Contribution Record Layout, the ~~agency retirement systems~~ shall inform the employer of the needed corrections to the test file.
 - 4. The employer shall not submit a report using the Upload Detail File Module [by electronic file pursuant to this subsection] until the test file is certified by the ~~agency retirement systems~~. If the employer is unable to timely submit its reports in accordance with KRS 61.675 and 78.625 through the Upload Detailed File Module, the employer shall timely submit its reports ~~through~~ ~~via~~ the Enter Report Details Module.

~~{(2)} [The retirement systems shall notify each employer of the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site and shall notify each employer if the Web address of the secure Kentucky Retirement Systems' Employer Self Service Web site changes.]~~

~~(6).~~

- (a) An employer shall submit electronic mail containing confidential member account information, PII, or PHI only through the agency's secure electronic mail portal. The Kentucky Public Pensions Authority Employer Reporting Manual shall provide employers with information on how to register, access, and use the secure electronic mail portal.
- (b) An employer shall ensure that the primary reporting official or any other authorized user holds any password or other means for accessing the electronic mail portal in a confidential manner and does not release them to any other person.

Section 4. Submitting Reports.

- (1) Each employer shall submit the monthly reports required by KRS 61.675, 78.625, and this administrative regulation on or before the ~~tenth~~ ~~10th~~ of the month following the period being reported. Reports shall be submitted through:
 - (a) The ESS Web site, for ESS Employers;
 - (b) KHRIS, for County Fee Employers and KHRIS Employers; and
 - (c) An electronic file transfer in a system maintained by the Finance and Administration Cabinet, for the Kentucky Personnel Cabinet.
- (2) Each County Fee Employer shall also submit a Supplemental Report through the ESS Web site.
- (3) Each month, the agency shall provide detailed information to employers regarding the employer submitted reports from the previous month. If the agency notifies the employer of any errors, the employer shall resolve the errors prior to the employer's next report submission.

Section 5. Additional Reporting Requirements for School Boards.

- (1) Each school board shall submit the EOY Report through the ESS Web site by the end of day twenty (20) calendar days following the end of the fiscal year.
- (2) After reviewing the EOY Report and identifying any employee who may need a correction or adjustment to his or her record, the agency shall provide the school board with the following applicable report(s) that the school board shall complete and submit through the ESS Web site no later than the end of day November 15th of the same calendar year:
 - (a) An Exception Report, if an employee had employee contributions reported during the fiscal year, but did not average eighty (80) hours per month of actual worked time in the fiscal year;
 - (b) A Multiple Enrollment Report, if an employee was reported with multiple periods of employment or multiple positions of employment during the fiscal year requiring an additional breakdown of the total actual days worked;
 - (c) A Non-Participating Employees Report, if an employee was reported as non-participating during the fiscal year and had salary reported during the school year that appears to meet the definition of a regular full-time position employee; and
 - (d) An Error Listing Report, if:
 - 1. An employee was included on the EOY report, but was not otherwise reported during the fiscal year;
 - 2. An employee was reported during the fiscal year, but was not included on the EOY report; or
 - 3. An employee had invalid data on the EOY report, including multiple records for the same employee or employees that do not have an account established with the agency.
- (3) A penalty of \$1,000 shall be imposed on school boards who fail to submit the required reports within the time periods prescribed by this section. An additional penalty of \$250 per month may be imposed every month until the required reports are submitted.

Section 6. Full-time Employee and Non-participating Position Reporting.

- (1) Each employer shall report:
 - (a) All employees in a regular full-time position;
 - (b) All employees in non-participating positions, except as provided in subsection (2) of this section; and
 - (c) Employees whose employment ended during the report month, including the employee's last day of paid employment and the reason the employment ended.
- (2) Employers shall not report the following employees in non-participating positions:
 - (a) Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are:
 - 1. Exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; or
 - 2. Classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a);
 - (b) Retired-reemployed school resource officers, sheriff's deputies, and police officers that are exempt from reporting under 105 KAR 1:390; and
 - (c) City managers and appointed local government officials in a retirement system, Mayors, or city legislative body members who elect not to participate in the systems by completing, and the employer submitting, Form 2012, Election or Rejection of Participation for Mayors and Members of City Legislative Bodies, prior to participation in the systems in accordance with KRS 78.540(1).
- (3) Employees dually employed and participating in another state-administered retirement system shall also be reported to the applicable state-administered retirement system in accordance with its rules and regulations.

Section 7. Non-Participating Positions Classification.

- (1) An employer shall not change an employee's position status for the same position from full-time to seasonal, temporary, emergency, probationary, or interim.

(2) An employer shall not change the classification of an employee from one (1) non-participating position status to another non-participating position status during a fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.

(3)

(a) An employer shall classify an employee as holding a seasonal position pursuant to KRS 61.510(21)(a) and 78.510(21)(a) only if the position:

1. Is temporary in duration;
2. Coincides with one (1) or more particular season(s) of the year, which may recur regularly from year to year; and
3. Is limited to six (6) months for noncertified school board positions or nine (9) months for all other positions.

(b)

1. Except as provided in subparagraph 2. of this paragraph, if the employer classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection, there shall be a three (3) calendar month break in employment before the employee may again hold a seasonal position.
2. If the employer is a school board that classifies an employee as holding a seasonal position and the employment of the employee in the seasonal position is terminated after the period defined in paragraph (a)3. of this subsection during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employee may again hold the same seasonal position.

(4) An employer shall only classify an employee as holding an emergency position pursuant to KRS 61.510(21)(b) or 78.510(21)(b) if the position:

- (a) Is created as a result of an emergency as determined by the employer for a period not to exceed thirty (30) working days, and is non-renewable; or
- (b) Is created in direct relation to a state of emergency declared by the President of the United States or the Governor of Kentucky.

(5) An employer shall only classify an employee as holding a temporary position pursuant to KRS 61.510(21)(c) or 78.510(21)(c) if the position is nonrenewable and the period in which the position exists does not exceed nine (9) calendar months for positions in the Kentucky Employees Retirement System or twelve (12) calendar months for positions in the County Employees Retirement System.

(6) An employer participating in the Kentucky Employees Retirement System shall only classify an employee as holding an interim position pursuant to KRS 61.510(21)(e) if the position is created for a one (1) time or recurring need that does not exceed nine (9) months.

(7)

(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a part-time position pursuant to KRS 61.510(21)(d) or 78.510(21)(e) if the position requires less than an average of 100 hours per month of actual worked time in a calendar or fiscal year.

(b) School boards shall only classify a noncertified employee as holding a part-time position pursuant to KRS 78.510(21)(e) if the position requires less than an average of eighty (80) hours per month of actual worked time in a fiscal year.

(8)

(a) An employer shall only classify an employee as holding an intermittent position if the position requires a sporadic work schedule. Across a calendar or fiscal year, an intermittent position employee:

1. May or may not earn wages every month;
2. May qualify as a part-time position in accordance with subsection (7) of this section in some months; or
3. May qualify as a regular full-time position in some months.

(b) For non-school board employees:

1. If an employee's actual worked time averages less than 100 hours per month in a fiscal or calendar year, the employee shall be classified as non-participating.
2. If an employee's actual worked time averages more than 100 hours or more per month in a fiscal or calendar year, the employee shall be classified as participating.

(c) For school board employees:

1. If an employee's actual worked time averages less than eighty (80) hours per month in a fiscal year, the employee shall be classified as non-participating.
2. If an employee's actual worked time averages more than eighty (80) hours per month or more in a fiscal year, the employee shall be classified as participating.

(9)

(a) Except as provided in paragraph (b) of this subsection, an employer shall only classify an employee as holding a volunteer position if the employee meets the requirements of KRS 61.510(42) or 78.510(39).

(b) An employer shall only classify a retired member as a volunteer if the employee meets the requirements in KRS 61.510(42), 61.637(17)(e), 78.510(39), and 78.5540(4)(e) and 105 KAR 1:390.

(10) The agency shall have the authority to determine whether any employee or retired member designated as holding a non-participating position by an employer is an employee in a regular full-time position.

(a) If the employer initially reports the employee in a non-participating position and the agency subsequently determines that the employee worked or averaged the necessary hours, or otherwise meets the requirements to be classified as an employee in a regular full-time position, the employer and employee shall be billed for omitted service in accordance with KRS 61.552(2) and 78.545, except as provided in paragraph (b) of this subsection.

(b) For retired reemployed members, the agency shall adjust the previously reported records from non-participating to retired reemployed and the employer shall pay the employer contributions and, if applicable, health insurance contributions.

(11)

(a) Except as provided in subsections (c) and (d) of this section, hours worked and creditable compensation earned by an employee working in multiple positions with one (1) or more employers participating in the same system shall be combined in accordance with KRS 61.680 and 78.545 only for the following positions:

1. Regular full-time;
2. Part-time;
3. Intermittent; or
4. Volunteer, if the employee has a membership date prior to August 1, 2016.

(b) If multiple part-time positions, intermittent positions, or volunteer positions (for employees with a membership date prior to August 1, 2016) are combined under paragraph (a) of this subsection and, as a result, the employee averages the required hours for a regular full-time position, employer contributions and employee contributions (including any applicable health insurance contributions) shall be remitted in accordance with Section 9 of this administrative regulation.

(c) Hours worked and creditable compensation earned by an employee working in a seasonal, temporary, emergency, probationary, or interim position with an employer shall not be combined with any other regular full-time, part-time, intermittent, or volunteer position with an employer in the same system.

(d) Hours worked and creditable compensation earned by an employee who retires or terminates employment shall not be combined with hours worked and creditable compensation later earned by the employee if the employee reemploys with a participating employer during the same fiscal year.

Section 8. Independent Contractors and Leased Employees.

- (1) Quasi-governmental employers, as defined in 105 KAR 1:451, shall report persons providing services as an independent contractor, leased employee, or other employment arrangement in accordance with KRS 61.5991 and 105 KAR 1:451.
- (2) The agency shall have the full authority to determine whether any person designated as an independent contractor, leased employee, or non-employee by any employer:
 - (a) Is an employee in a regular full-time position required to participate in the systems prospectively; or
 - (b) Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.
- (3) The agency shall apply the common law factors used by the Internal Revenue Service, in accordance with IRS Publication 1779, to make the determination described in subsection (2) of this section. The agency may also consider rules issued by the United States Department of Labor for determining whether a worker is an employee or an independent contractor under federal wage and hour laws.
- (4) The agency shall provide written notification to the employer if it determines that any person designated as an independent contractor, leased employee, or non-employee by the employer:
 1. Is an employee in a regular full-time position required to participate in the systems prospectively; or
 2. Was an employee in a regular full-time position for previous periods that were not reported by the employer in accordance with KRS 16.543, 61.543, 61.675, 78.615, and 78.625, and this administrative regulation.
- (b) A notice provided in accordance with paragraph (a)2. of this subsection shall include a Form 4225, Verification of Past Employment. The employer shall complete and submit the Form 4225 by the end of day thirty (30) calendar days from the date the notice was provided.
- (5) An employer shall remit all reports, records, contributions, and reimbursements for a person as an employee in a regular full-time position in accordance with KRS 61.675, KRS 78.625, and this administrative regulation effective the first day of the calendar month after the date the notification described in subsection (4)(a) of this section is provided.
 - (b) Once a Form 4225, Verification of Past Employment, is received, the agency shall notify the employer of the delinquent omitted employer contributions owed.
 1. An employer shall remit the delinquent omitted employer contributions in accordance with KRS 61.552(2), 61.675(3)(b), 78.545, and 78.625(3) no later than the end of day on the last day of the calendar month following the month the notice is provided.
 2. If an employer needs an extension or payment schedule for the delinquent omitted employer contributions owed, it shall contact the agency to request the extension or payment schedule for the delinquent omitted employer contributions owed.

Section 9. Employer, Employee, and Health Insurance Contributions.

- (1) (a) ~~{(3)}~~ Each employer shall ~~remit/submit~~ the employer and employee contributions, and the employer contributions and reimbursements for retiree health insurance premiums as required by KRS 61.675 and ~~{KRS}~~ 78.625 no later than the end of day on the ~~tenth~~ ^{10th} calendar day of the month following the month being reported.
- (b) Employers shall not remit employer or employee contributions for employees in a non-participating position unless required to do so pursuant to KRS 61.680(6) and 78.545.
- (2) Required contributions as ~~established~~ ~~{indicated}~~ in subsection (1) of this section shall be remitted:
 - (a) By ESS Employers:
 1. Through ~~{Electronically using}~~ the agency's secure ESS~~{Kentucky Retirement Systems' Employer Self-Service}~~ Web site;
 2. ~~{(b)}~~ By mailing or hand delivering a check;
 - ~~{(c)}~~ ~~{By the eMARS system maintained by the Finance and Administration Cabinet;}~~ or
 3. ~~{(d)}~~ By wire transfer; and~~{}~~
 - (b) By KHRIS Employers and County Fee Employers through a payment system maintained by the Finance and Administration Cabinet.
- (3) (a) Except as provided in subsection (b) of this section, if an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615:
 1. The agency shall notify the employer of the additional amount of employee contributions due from the employee;
 2. The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.545, 16.583, 61.543, 61.560, 61.597, 61.702, 78.5512, 78.5516, 78.5536, 78.610, or 78.615 from his or her creditable compensation and remit the additional contributions to the agency; and
- (b) 1. If the employee is no longer employed by the employer, the employer shall notify the agency and the agency shall refund the incomplete employee contributions submitted by the employer on behalf of the employee to the employer, and the employer shall withhold the applicable taxes from the contributions and remit the remaining money to the employee.
 2. If the contributions are refunded in accordance with this paragraph, then the agency shall provide the employee with:
 - a. Any interest credited on the incomplete employee contributions in accordance with KRS 61.575 or 78.640; and
 - b. Notification explaining the potential impact to his or her service credit and an invoice for omitted service in accordance with KRS 61.552(2) and 78.545. If the omitted service invoice is not paid, the employee may lose service credit for the month(s).

Section 10. Creditable Compensation.

- (1) ~~{(4)}~~ The employer shall report all creditable compensation paid during a month no later than the end of day on ~~{by}~~ the tenth calendar day of the ~~{following}~~ month following the month being reported.
- (2) (a) If creditable compensation is being reported for a month other than the reporting month, the ~~{The}~~ employer shall designate the month to which the creditable compensation ~~shall~~ ^{should} be applied~~{ if it is not the month for which the employer is reporting and if the~~.
- (b) The report may need to reflect a month other than the reporting month if the creditable compensation~~{ was}~~ earned is from the month in which the employee:
 1. Became employed;
 2. Became eligible to participate in ~~{one of}~~ the systems~~{ administered by Kentucky Retirement Systems};~~
 3. Was transferred ~~from a~~ ^{to} ~~hazardous coverage from}~~ nonhazardous position to a hazardous position~~{ participation};~~

4. Was transferred from a hazardous position~~[coverage]~~ to a nonhazardous position~~[participation]~~;
 5. Terminated from employment; or
 6. Became ineligible to participate in~~[one (1) of]~~ the systems~~[administered by Kentucky Retirement Systems]~~.
- (3).
- (a).
 1. Except as provided in subparagraph 3. of this paragraph, the employer shall submit a valid Form 7250, Verification of Payments Outside Regular Wages, prior to payment for creditable compensation paid as
~~[(b)] [If the employee is paid creditable compensation in] a lump sum, [or] nonrecurring payment, or other payment outside of regular wages, and [the employer] shall designate the reason for the lump sum, [or] nonrecurring payment, or other payment outside of regular wages.~~
 2. ~~[(1)]~~ If the lump sum, ~~[or] nonrecurring payment, or other payment outside of regular wages is for [was earned during]~~ a specific time period, the employer shall designate the time period during which the lump sum, ~~[or] nonrecurring payment, or other payment outside of regular wages was or will be earned.~~
 - (b).
 1. The agency shall review the Form 7250 and notify the employer of its findings. If the agency determines the wages are creditable compensation, the agency shall also indicate how the wages shall be reported.
 2. If the employer fails to designate a specific time period during which the lump sum, ~~[or] nonrecurring payment, or other payment outside of regular wages was or will be earned in accordance with paragraph (a)2. of this subsection,~~ the payment shall be considered a lump sum bonus pursuant to KRS 16.505(8), 61.510(13), or 78.510(13).
 3. The Form 7250 shall not be completed for creditable compensation paid as a result of reinstatement due to an Order from the Personnel Board, Labor Board, or Court.
- (4) Workers' compensation payments shall not be included in creditable compensation.
- ~~[(5)] [The provisions of subsection (1) of this section shall not apply to the Kentucky Personnel Cabinet or agencies that are reported by the Kentucky Personnel Cabinet.]~~
- ~~[(6)] [Each employer shall report employees who are regular full-time employees as defined by KRS 61.510(21) and 78.510(21) and shall remit employer and employee contributions for those employees.]~~
- ~~[(7)] [If an employer fails to withhold from an employee's creditable compensation the full amount of contributions due from the employee in accordance with KRS 16.583, 61.560, 61.597, or 61.702:]~~
- ~~[(a)] [The retirement systems shall notify the employer of the additional amount of employee contributions due from the employee;]~~
- ~~[(b)] [The employer shall withhold the additional contributions due from the employee in accordance with KRS 16.583, 61.560, 61.697, or 61.702 from the employee's creditable compensation and remit the additional contributions to the retirement systems;]~~
- ~~[(c)] [If the employee is no longer employed by the employer, the employer shall notify the retirement systems and the retirement systems shall refund the contributions submitted by the employer on behalf of the employee to the employer, which shall withhold the applicable taxes from the contributions and remit the remaining money to the employee; and]~~
- ~~[(d)] [If the contributions are refunded in accordance with paragraph (c) of this subsection, then that service credit shall be omitted service in accordance with KRS 61.552(23).]~~
- ~~[(8)] [Each employer shall report employees who are not regular full-time employees as defined by KRS 61.510(21) and 78.510(21), but shall not remit employer or employee contributions for those employees unless required to do so pursuant to KRS 61.680(6), except:]~~
- ~~[(a)] [Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and who are exempt from FICA withholding pursuant to 26 U.S.C. 3121(b)(10) and 26 C.F.R. 31.3121(b)(10)-2; and]~~
- ~~[(b)] [Student employees of public universities participating in the Kentucky Employees Retirement System who are enrolled as full-time students in a course of study at the university and are classified as full-time students throughout the fiscal year pursuant to 29 C.F.R. 519.2(a).]~~
- ~~[(9)]~~
- ~~[(a)] [An employer participating in Kentucky Employees Retirement System or County Employees Retirement System shall not classify an employee in more than one (1) non-participating position status during the fiscal year, except an employer participating in the County Employees Retirement System may classify an employee as probationary pursuant to KRS 78.510(21)(d) in the same fiscal year that the employer classifies the employee as seasonal, emergency, or part-time.]~~
- ~~[(b)] [An employer participating in the Kentucky Employees Retirement System or the County Employees Retirement System shall not change an employee's position status from full-time to seasonal, temporary, or interim in the same fiscal year.]~~
- ~~[(c)] [An employer shall not classify an employee as a seasonal employee pursuant to KRS 61.510(21)(a) or 78.510(21)(a) unless the duties of the job can only be performed during a defined time period during a fiscal or calendar year. If the employer classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a three (3) calendar month break in employment before the employer may again classify the employee as a seasonal employee, except for employers that are school boards. If an employer that is a school board classifies an employee as seasonal and the employee is terminated after the defined time period during a fiscal or calendar year, there shall be a six (6) calendar month break in employment before the employer may again classify the employee as a seasonal employee.]~~
- ~~[(d)] [If an employer violates the provisions of this subsection, the retirement systems shall determine if the employee worked or averaged the necessary hours to be in a regular full-time position as provided in KRS 61.510(21) or 78.510(21). If the employee worked or averaged the necessary hours to be in a regular full-time position as defined by KRS 78.510(21), the service credit shall be omitted service in accordance with KRS 61.552(23).]~~
- [Section 2.]
- ~~[(1)] [Each employer shall submit electronic mail to the retirement systems by logging on to the Kentucky Retirement Systems' secure electronic mail server.]~~
- ~~[(2)]~~
- ~~[(a)] [If an employer submits personal information about its employees to the retirement systems in an unsecure electronic format or submits personal information regarding its employees intended to be submitted to the retirement systems to another person or entity by hand delivery, mail, fax, or in an electronic format, the employer shall notify affected employees in writing of the disclosure of personal information and provide information regarding obtaining credit reports.]~~
- ~~[(b)] [Personal information includes the member's first name or first initial and last name in combination with the member's:]~~
- ~~1.] [Social Security number;]~~
- ~~2.] [Driver's license number;]~~
- ~~3.] [Personal Identification Number permitting access to the member's account; or]~~
- ~~4.] [Medical Information.]~~
- ~~[(c)] [The retirement systems shall notify the employer of a disclosure upon discovery.]~~
- ~~[(d)] [The employer shall notify the retirement systems of a disclosure upon discovery.]~~

~~[(c)] [The employer shall submit a draft of the written notification to be made to affected employees to the retirement systems for approval or denial.]~~

~~[(f)] [The employer shall submit copies of the written notifications made to affected employees to the retirement systems after the notifications have been made.]~~

~~[(g)] [If the retirement systems is required by federal or state law to provide notification to affected members about the employer's disclosure of personal information or if the retirement systems determines that it should provide the notification to its affected members because of the nature or magnitude of the employer's disclosure, the employer shall reimburse the retirement systems for its costs in notifying members affected by the employer's disclosure.]~~

~~[(h)] [In transmitting any medically related personal information, the employer shall comply with all statutes and regulations comprising the Health Insurance Portability and Accountability Act of 1996 "HIPAA", Pub.L. 104-191 and the Health Information Technology for Economic and Clinical Health Act "HITECH", Pub.L. 111-5.]~~

~~[(i)] [Each employer shall execute a data use agreement with retirement systems.]~~

~~[Section 3.]~~

~~[(1)]~~

~~[(a)] [The retirement systems shall submit an invoice to employers for any payments owed to the retirement systems, which were not paid through the normal monthly reports.]~~

~~[(b)] [The employer shall remit payment to the retirement systems by the due date provided on the invoice.]~~

~~[(2)] [The retirement systems may offset funds owed by the employer to the retirement systems with funds owed to the employer by the retirement systems.]~~

~~[Section 4.]~~

~~[(1)] [An employer shall pay interest at the rate adopted by the board for any creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission or for any creditable compensation paid in anticipation or settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Human Rights Commission including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes.]~~

~~[(2)] [The interest shall be assessed from the time period for which the creditable compensation has been reinstated.]~~

~~[Section 5.] [If an employer refuses to provide the retirement systems access to records or information requested in accordance with KRS 61.685 or does not respond to a request for information or records by the retirement systems, the retirement systems may, if appropriate, hold all payments of:]~~

~~[(1)] [Any funds due to the employer; or]~~

~~[(2)] [Refunds or initial retirement allowances to any employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the retirement system.]~~

~~Section 11. [Section 6.] Maximum Limits to Creditable Compensation.~~

~~(1) The agency shall provide the maximum annual compensation limit to employers.~~

~~(2) Effective only for the 1996 fiscal year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the fiscal year.~~

~~(3) Effective July 1, 1996, and before July 1, 2002, the creditable compensation on which contributions are reported shall not exceed the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17), \$150,000, as adjusted for cost-of-living increases under 26 U.S.C. 401(a)(17)(B). [The retirement system shall notify employers of the maximum annual compensation limit.] Each employer shall report contributions on all creditable compensation up to the maximum annual limit. Once an employee's creditable compensation has reached the maximum annual limit, the employer shall continue to report the amount of the employee's creditable compensation in accordance with Section 10 of this administrative regulation, but shall not remit [report] any further employer or employee contributions on the employee's creditable compensation. [If excess contributions are erroneously reported, the retirement system shall refund the excess contributions to the employer for distribution to the employee after making payroll deductions in accordance with federal and state law.]~~

~~[(2)] [Effective only for the 1996 plan year, in determining the compensation of an employee eligible for consideration under this provision, the rules of 26 U.S.C. 414(g)(6) shall apply, except that in applying these rules, the term "family" shall include only the spouse of the member and any lineal descendants of the employee who have not attained age nineteen (19) before the close of the year.]~~

~~(4) [(2)] Effective with respect to fiscal [plan] years beginning on and after July 1, 2002, an employee's [a plan member's] annual compensation that exceeds \$200,000, [(as adjusted for cost-of-living increases in accordance with 26 U.S.C. 401(a)(17)(B).)] shall not be taken into account in determining benefits or contributions due for any fiscal [plan] year.~~

~~(a) Annual compensation shall include compensation during the fiscal [plan] year or any other consecutive twelve (12) calendar month period over which compensation is otherwise determined under the plan (the determination period).~~

~~(b) If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be prorated based on the following formula:~~

$$\text{The otherwise applicable annual compensation limit} \times \frac{\text{Number of months in the short determination period}}{12} = \text{The annual compensation limit}$$

~~(c) If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.~~

~~(d) The cost-of-living adjustment in effect for a calendar year shall apply to annual compensation for the determination period that begins with or within the calendar year. [If the determination period consists of fewer than twelve (12) months, the annual compensation limit shall be an amount equal to the otherwise applicable annual compensation limit multiplied by a fraction, the numerator of which is the number of months in the short determination period, and the denominator of which is twelve (12). If the compensation for any prior determination period is taken into account in determining a plan member's contributions or benefits for the current plan year, the compensation for this prior determination period shall be subject to the applicable annual compensation limit in effect for that prior period.]~~

~~(2).~~

~~(a) [(4)] Creditable [A participating member may pay contributions for the creditable] compensation over the maximum annual compensation limit may be considered for the years used to determine the employee's [member's] final compensation for purposes of retirement if:~~

1. ~~1. (a) The employee's member's~~ creditable compensation has exceeded the maximum annual compensation limit contained in 26 U.S.C. 401(a)(17) in years prior to the fiscal year beginning July 1, 2002;
 2. ~~2. (b) The employee member~~ has filed a notification of retirement; ~~and~~
 3. ~~3. (c) The excess creditable compensation is within the maximum annual compensation limit applicable in 2002-2003; and~~
 4. The employee has remitted payment of employee contributions on the excess creditable compensation at the rate proscribed by KRS 61.560, 61.702, 78.5536, and 78.610.
- (b) Upon receipt of employee contributions, the ~~agency retirement systems~~ shall bill the employer for the employer contributions on the excess creditable compensation in accordance with KRS 61.565 and 78.635, and the employer shall remit the employer contributions to the ~~agency retirement systems~~.
- (c) The excess creditable compensation shall only be included in retirement calculations if both the employee and employer have paid their respective contributions.

Section 12. Creditable Compensation Paid as a Result of an Order of a Court, the Personnel Board, or the Kentucky Commission on Human Rights.

- (1) The employer or employee may submit the following for review of potential effects to the employee's account and compliance with KRS 16.505-16.592, 61.510-61.705, and 78.510-78.852 prior to the entry of the agreement or order:
 - (a) A proposed settlement agreement or draft order related to the resolution of a case pending before the Personnel Board, the Kentucky Commission on Human Rights, or a court of competent jurisdiction regarding employment disputes that may affect an employee's service with the systems; or
 - (b) An order of reinstatement of an employee pursuant to KRS 61.569 and 78.545.
- (2) For creditable compensation paid as a result of an order by the Personnel Board under the authority of KRS 18A.095, by a court of competent jurisdiction, or by the Kentucky Commission on Human Rights:
 - (a) The creditable compensation shall be reported in accordance with Section 10 of this administrative regulation and shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer;
 - (b) The employer shall pick-up the employee contributions as required by KRS 61.543, 61.560, 61.702, 78.5536, 78.610, and 78.615 for the designated period;
 - (c) The employer shall remit employer contributions as required by KRS 61.565 and 78.635 for the designated period; and
 - (d) The employer shall pay interest at the rate adopted by the Kentucky Retirement Systems or the County Employees Retirement System on the creditable compensation.
- (3) The interest owed pursuant to subsection (2)(d) of this section shall be assessed beginning on the first day the designated period began or begins.

Section 13. Excess Contributions.

- (1)
 - (a) Upon discovery that excess contributions have erroneously been remitted, the agency shall correct its record in compliance with KRS 61.685 and 78.545 by refunding the excess contributions, except as provided in paragraph (c) of this subsection.
 - (b) The employer shall withhold the applicable taxes from the employee contributions and remit the remaining money to the employee.
 - (c) The agency may withhold excess employer contributions to offset a payment owed to the systems.
 - (d) The agency shall provide the employee with any interest credited on the excess employee contributions in accordance with KRS 61.575 or 78.640.
- (2) If an employee uses paid sick leave while awaiting workers' compensation and subsequently receives workers' compensation payments for the hours during which paid sick leave was previously reported, the employee contributions on the paid sick leave that have been reported to the agency shall be refunded, unless the employee has remitted the workers' compensation payments to the employer in exchange for the use of his or her paid sick leave.

Section 14. Death or Disability of a Participating Employee.

- (1)
 - (a) Employers shall report the death of a participating employee through the ESS Web site. Employers may notify the agency of the death of a previous employee.
 - (b) Upon the employer's report of the death of an employee or retired member, the agency shall begin the process of determining death benefits as provided in KRS 16.601, 61.621, 61.630, 61.640, 61.703, 61.705, 78.545, 78.5532, 78.5534, and 78.5538.
 - (c) ~~If, in the event of,~~ a death ~~that~~ is due to an act in line of duty or is duty-related, the employer shall add a comment to the death notice indicating this and shall complete and submit a valid Form 6800, Application for Duty Related/In Line of Duty Death Benefits. The employer shall also provide to the deceased employee's beneficiary or representative of the deceased employees' estate or trust, or submit to the agency:
 1. The employer death investigation report;
 2. A detailed position description or a valid Form 8030, Employer Job Description;
 3. Certification or documentation of the employee's last day of paid employment; and
 4. Any additional information requested by the agency or a third-party vendor on its behalf.
- (2) ~~If, in the event of,~~ an employee files a ~~employee's~~ claim for disability retirement benefits, the employer shall comply with the provisions of KRS 16.582, 61.600, 61.621, 61.665, 78.545, 78.5522, 78.5524, and 105 KAR 1:210, 105 KAR 1:310, and 105 KAR 1:455, and submit to the agency:
 - (a) A valid Form 8030, Employer Job Description and, if the employee was injured on the job, a copy of the incident report;
 - (b) Certification or documentation of the employee's last day of paid employment;
 - (c) Information regarding the employee's request for reasonable accommodations as required by KRS 61.665(2)(a), 61.665(2)(b), and 78.545; and
 - (d) Any additional information regarding the employee's job duties and reasonable accommodations upon request by the agency or a third-party vendor on its behalf.

Section 15. Retirement and Other Reporting Requirements for Participating Employers.

- (1)
 - (a) The Form 6000, Notification of Retirement, **Employer Certification of Leave Balances and Final Salary** section ~~Section H~~ shall be completed by the employer when an employee files for retirement in accordance with KRS 16.582, 61.600, 61.590, 78.545, 78.5522, and 78.5524. The employer shall certify the employee's leave balances and final salary, including any anticipated salary through the employee's termination date yet to be reported to the agency.
 - (b) The employer shall complete and provide the valid Form 6000, **Employer Certification of Leave Balances and Final Salary** section ~~Section H~~, signed by the designated Agency Reporting Official, to the employee or through ESS **no later than thirty (30) days prior to the employee's effective retirement date as provided on the Form 6000.**
- (2) The employer shall submit personnel actions prior to September 15, 2011 on a valid Form 2020, Advice of Personnel Action.

- (3) Each employer shall complete and file a valid Form 2023, Leave Without Pay Verification, when an employee begins and ends a period of leave without pay.
- (4) ~~If an~~ at any time the employee provides a Form 2035, Beneficiary Designation, to his or her employer, the employer shall forward the Form 2035 to the agency immediately upon receipt.
- (5) If either of the following forms are provided to the employer, it shall submit the completed applicable form by the end of day thirty (30) calendar days from the date the form was provided:
- (a) A Form 6487, Request for Member Pension Spiking Exemption Amounts in accordance with 105 KAR 1:142, Section 4; or
- (b) A Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with 105 KAR 1:142, Section 3.
- (6) If the agency is notified or becomes aware of past employment for which a member did not receive service credit, the agency shall provide the employer with a Form 4225, Verification of Past Employment, to certify dates, hours, wages, and the position classification for the past employment. The employer shall complete and submit the valid Form 4225 by the end of day thirty (30) calendar days from the date the Form 4225 was provided.
- (7) An employer shall submit any additional information requested by the agency, including a position description or any other documentation deemed necessary by the agency to ensure employer compliance with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.

Section 16. Felony Charges Related to Employment. Employers shall notify the agency when an employee hired on or after August 1, 2000, is convicted of a felony related to his or her employment.

Section 17. Employer Cooperation with the Agency.

- (1) If an ESS Employer or County Fee Employer refuses to provide the agency access to records or information requested in accordance with KRS 61.685 and 78.545, or does not respond to a request for information or records by the agency, the agency may, if appropriate, hold payments of:
- (a) Any funds due to the employer; or
- (b) Refunds or initial retirement allowances to an employee or former employee of the employer whose refund or retirement may be affected by the records or information requested by the agency.
- (2) The agency may conduct an audit of the employer in accordance with KRS 61.675(2) and 78.625(5) to determine compliance with the provisions of KRS 16.505-16.652, 61.610-61.705, or 78.510-78.852.

[Section 7.]

- ~~{(1)} [For members retiring on or after January 1, 2014, but prior to July 1, 2017, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.]~~
- ~~{(a)} [For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.]~~
- ~~{(b)} [For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).]~~
- ~~{(2)} [If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over his or her last five (5) fiscal years of employment, the retirement systems shall send written notice to the member's last participating employer of the retirement systems' determination that the member has experienced annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, and the amount of the additional actuarial cost to the retirement systems attributable to the increases.]~~
- ~~{(3)} [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, the employer shall file a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, for a determination that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement. The Form 6481 shall be filed within sixty (60) days of the date on the notice. If the retirement systems had previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, the employer shall submit the determination and provide documentation that the increase in creditable compensation for that fiscal year was due to the employer implementing the proposed change in position or hiring.]~~
- ~~{(4)} [The employer shall provide any additional information requested by the retirement systems.]~~
- ~~{(5)} [The retirement systems may require the employer to make certifications regarding the information and documentation submitted.]~~
- ~~{(6)} [In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).]~~
- ~~{(7)} [The retirement systems shall issue a final administrative decision in writing informing the employer whether the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement.]~~
- ~~{(8)} [If the employer fails to submit a Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, within sixty (60) days of the date on the notice, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.]~~
- ~~{(9)} [If the employer disagrees with the final administrative decision by the retirement systems, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the date on the final administrative decision. The hearing shall be limited to the issue of whether the retirement systems correctly determined that the annual increases in the member's creditable compensation greater than ten (10) percent were not due to a bona fide promotion or career advancement.]~~
- ~~{(10)} [If the employer fails to file a written request for administrative hearing within thirty (30) days of the date on the final administrative decision, the employer shall pay the additional actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.]~~
- ~~{(11)} [The retirement systems shall issue an invoice to the last participating employer representing the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment. The employer may request that the retirement systems allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the retirement systems shall establish a payment plan for the employer.]~~
- ~~{(12)} [If the member was employed by more than one (1) participating employer when the member retired, the actuarial cost to the retirement systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five~~

(5) fiscal years of employment shall be divided equally among the member's last participating employers-]

[(13)] [An employer who is required to pay the additional actuarial cost pursuant to KRS 61.598 shall be treated as a participating employer in the system to which the employer is required to pay the additional actuarial cost solely for purposes of making the payment required pursuant to KRS 61.598.]

[Section 8.]

[(1)] [For members retiring on or after January 1, 2018, the retirement systems shall determine if annual increases in a member's creditable compensation greater than ten (10) percent occurred over the member's last five (5) fiscal years of employment.]

[(a)] [For each of the member's last five (5) fiscal years of employment, the retirement systems shall multiply the member's creditable compensation for the previous fiscal year by 110 percent. If the member's creditable compensation in any of his or her last five (5) fiscal years of employment is greater than the member's creditable compensation from the previous fiscal year multiplied by 110 percent, the retirement systems shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.]

[(b)] [The fiscal year immediately preceding the member's last five (5) fiscal years shall be used for comparison to determine if an increase in creditable compensation greater than ten (10) percent occurred in the initial fiscal year of the member's last five (5) fiscal years.]

[(c)] [For purposes of performing the calculations in paragraph (a) of this subsection, the member's creditable compensation shall be annualized by dividing the member's creditable compensation for the fiscal year by the number of months of service credit, and multiplying by twelve (12).]

[(2)] [The member shall receive a refund of all pre-tax and post-tax member contributions and interest directly attributable to the reduction in creditable compensation.]

[(a)] [Pre-tax member contributions shall be refunded to the member by the employer who picked up the contributions.]

[(b)] [Post-tax member contributions shall be refunded to the member directly from the retirement systems.]

[(c)] [Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly from the retirement systems.]

[Section 9.]

[(1)] [If the retirement systems determine that the member received annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment, the retirement systems shall send the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts.]

[(a)] [Pursuant to KRS 16.645, 61.675, and 78.545, the employer shall furnish the information required by the retirement systems in the discharge of its duties. The employer shall complete the Form 6487 in its entirety and provide supporting documentation.]

[(b)] [The employer shall submit a completed Form 6487 at the retirement office within sixty (60) days from the date the Form 6487 was mailed. If the employer fails to submit a completed Form 6487 within that sixty (60) day time period, Kentucky Retirement Systems shall issue a final administrative decision and provide adjustment correspondence to the member.]

[(2)] [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was not due to a bona fide promotion or career advancement, a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, leave without pay, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall indicate on the Form 6487 that none of the listed exemptions are applicable.]

[(a)] [The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time, a lump-sum payment made pursuant to alternate sick leave, or leave without pay during the employer's normal monthly reporting.]

[(b)] [If, upon review of the Form 6487, the employer believes that adjustments to the reported salaries are required, then the employer shall make those adjustments during the next monthly reporting cycle pursuant to KRS 16.645, 61.675, and 78.545.]

[(3)] [If the employer believes that the annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment was due to a bona fide promotion or career advancement, overtime attributable to a state or federally funded grant, or overtime attributable to a state of emergency, the employer shall include the salary directly attributable to each exemption in Part 2 of the Form 6487.]

[(a)] [If the employer believes that any of the salary is directly attributable to a bona fide promotion or career advancement, the employer shall complete Part 3 of the Form 6487.]

[(b)] [The employer shall provide an explanation and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement.]

[(c)] [In determining if a change in position or hiring was a bona fide promotion or career advancement, the retirement systems shall consider the factors listed in KRS 61.598(1)(a).]

[(4)] [The employer shall provide any additional information requested by the retirement systems. The retirement systems may require the employer to make certifications regarding the information and documentation submitted.]

[(5)] [If the increases in creditable compensation are not directly attributable to any of the listed exemptions and no reporting information needs to be corrected, then any annual increase in creditable compensation greater than ten (10) percent shall not be used to calculate the member's retirement allowance.]

[(6)] [The retirement systems shall not issue a refund to the employer for the excess employer contributions. The retirement systems shall utilize any employer contributions directly attributable to the reduction in creditable compensation to pay the unfunded liability of the pension fund in which the retiring member participated.]

Section 18. [Section 10.] Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Kentucky Public Pensions Authority Employer Reporting Manual", July 2021;
- (b) Form 1012, "Election or Rejection of Participation for Mayors and Members of City Legislative Bodies", March 2024;
- (c) Form 2020, "Advice of Personnel Action", March 2024;
- (d) Form 2023, "Leave Without Pay Verification", March 2024;
- (e) Form 2035, "Beneficiary Designation", March 2024;
- (f) Form 4225, "Verification of Past Employment", March 2024;
- (g) Form 6000, "Notification of Retirement", June 2023;
- (h) Form 6800, "Application for Duty Related/In Line of Duty Death Benefits", June 2023;
- (i) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", March 2024;
- (j) Form 7072, "Reporting/Balancing Employer Acknowledgment", April 2021;
- (k) Form 7250, "Verification of Payments Outside Regular Wages", September 2024;
- (l) Form 7851, "Data Use and Reporting Agreement", March 2024; and
- (m) Form 8030, "Employer Job Description", June 2023.

~~[(a)] [Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", July 2015; and]~~

~~[(b)] [Form 6487, "Request for Member Pension Spiking Exemption Amounts", February 2018.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Public Pensions Authority, ~~{Kentucky Retirement Systems, Perimeter Park West,}~~ 1260 Louisville Road, Frankfort, Kentucky 40601, Monday through Friday, from 8 a.m. to 4:30 p.m. This material is also available on the Kentucky Public Pensions Authority's Web site at kyret.ky.gov.

(105 KAR 001:140. 18 Ky.R. 922; 1321; eff. 11-8-1991; 21 Ky.R. 1517; eff. 2-8-1995; 22 Ky.R. 1871; eff. 6-6-1996; 31 Ky.R. 382; 699; eff. 11-5-2004; 35 Ky.R. 970; 1719; eff. 2-6-2009; 38 Ky.R. 74; 492; 9-28-2011; 39 Ky.R. 1484; 1872; eff. 4-5-2013; 40 Ky.R. 360; 1090; 1701; eff. 3-7-2014; 44 Ky.R. 1598; 1959; eff. 4-6-2018; 51 Ky.R. 346; 856; eff. 2-4-2025; Recodified to 105 KAR 004:140; eff. 8-5-2026.)

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