

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amended at ARRS Committee)

105 KAR 1:142. Limitations and exclusions on creditable compensation in the last five (5) fiscal years of service.

RELATES TO: KRS 16.645, 61.598, 61.645, 61.675, 78.545, 78.625, 78.782

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.598(6), 78.545

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.505(1)(g) authorizes the Kentucky Public Pensions Authority to promulgate administrative regulations on behalf of the Kentucky Retirement Systems and the County Employees Retirement System that are consistent with KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.598(6) and 78.545 authorize the Kentucky Public Pensions Authority to promulgate an administrative regulation to administer the limitations and exclusions on increases in creditable compensation codified in KRS 61.598 and 78.545. This administrative regulation establishes limitations and exclusions on increases in creditable compensation in the last five (5) years of service for retiring members with a membership date prior to January 1, 2014 in accordance with KRS 61.598 and 78.545.

Section 1. Definition. "Member" means a member of the systems with a membership date prior to January 1, 2014.

Section 2. Determining Percentage Increases for Creditable Compensation.

(1) Except as provided in subsection (2) of this section, in accordance with KRS 61.598 and 78.545, the agency shall review each of the last five (5) fiscal years of the member's employment to determine if his or her creditable compensation in any of the last five (5) fiscal years increased by ten (10) percent or more compared to the immediately preceding fiscal year.

(a) 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 of ten (10) percent or more occurred in the initial fiscal year of the member's last five (5) fiscal years.

(b) For each of the member's last five (5) fiscal years of employment, the agency 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 immediately preceding fiscal year multiplied by 110 percent, the agency shall determine that an annual increase in the member's creditable compensation greater than ten (10) percent has occurred.

(c) For purposes of performing the calculations in this subsection:

1. Only fiscal years in which the member was employed in a regular full-time position in at least one (1) full month of the fiscal year shall be considered; and
2. 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) For members with an effective retirement date on or after January 1, 2018:

(a) The agency shall not review creditable compensation earned by the member prior to July 1, 2017; and

(b) For members with an effective retirement date on or after June 29, 2021, if a reduction in the member's creditable compensation causes his or her monthly retirement allowance to decrease by twenty-five (25) dollars or more, the member's

monthly retirement allowance shall only be reduced by the amount that exceeds \$24.99.

(3) The agency shall not consider the following changes in creditable compensation to be increases in creditable compensation:

- (a) The employee was on leave without pay for any reason in the fiscal year(s) prior to the fiscal year that contained the increased creditable compensation for members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017; or
- (b) Modifications to the accounting method for reporting employees in accordance with KRS 61.675, KRS 78.625, and 105 KAR 1:140.

Section 3. Final Administrative Determination for Members with an Effective Retirement Date on or after January 1, 2014, but Prior to July 1, 2017.

(1)

(a) Based on the review as provided in Section 2 of this administrative regulation, if the agency determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide written notice to the member's last participating employer of the agency's determination.

(b) If the member was employed by more than one (1) employer when the member retired, the agency shall provide written notice to each of the member's last participating employers.

(c) The written notice shall include:

1. A statement that the member's creditable compensation in one (1) or more of the last five (5) fiscal years increased by more than ten (10) percent compared to the prior fiscal year;
2. The fiscal year or fiscal years in which the creditable compensation increased by more than ten (10) percent compared to the immediately preceding fiscal year;
3. Details of each increase in creditable compensation; and
4. The amount of the additional actuarial cost to the systems attributable to the increase or increases in creditable compensation.

(2)

(a) In order to indicate ~~If the employer believes~~ that one (1) or more annual increases in creditable compensation greater than ten (10) percent in the member's last five (5) fiscal years of employment were due to a bona fide promotion or career advancement, by the end of day thirty (30) calendar days from the date the notice indicated in subsection (1) of this section was provided, the employer shall:

1. Complete and submit a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement;
2. Submit predetermination documentation if the agency previously provided a determination that a change in position or hiring of the member would be a bona fide promotion or career advancement, 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;
3. Provide a copy of the personnel form with the date of the promotion or advancement, to verify an explanation, and documentation supporting the assertion that the increase in creditable compensation resulted from a bona fide promotion or career advancement, ~~if the employer believes~~ that any salary increase is directly attributable to a bona fide promotion or career advancement; and
4. Effective July 1, 2024, submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining

agreement approved by the legislative body of the employer, if the bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer.

(b) The employer shall report any increases in creditable compensation directly attributable to a lump-sum payment for compensatory time during the employer's normal monthly reporting in accordance with 105 KAR 1:140.

(3)

(a) The agency shall consider the following in determining if a change in position or hiring was a bona fide promotion or career advancement:

1. A valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, submitted in accordance with subsection (2)(a) of this section; and
2. Supporting documentation submitted by the employer in accordance with subsection (2)(a) of this section.

(b)

1. The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.
2. In accordance with KRS 16.645, 61.675, 78.545, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this paragraph by the end of day thirty (30) days from the date the request for additional information was provided.

(4) The employer shall pay the additional actuarial cost to the systems attributable to any annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment if the employer fails to comply with:

- (a) Subsection (2) of this section; or
- (b) Subsection (3)(b) of this section if additional information is requested in accordance with that subsection.

(5)

(a) If the employer timely submits a valid Form 6481, Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement, in accordance with subsection (3)(a) of this section, the agency 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.

(b) If the employer disagrees with the final administrative decision by the agency, the employer may appeal the decision in accordance with Section 6 of this administrative regulation.

(c) If the employer does not file a written request for administrative hearing timely as provided in Section 6 of this administrative regulation, the employer shall pay the additional actuarial cost to the systems attributable to annual increases in creditable compensation greater than ten (10) percent over the member's last five (5) fiscal years of employment.

(6)

(a) If an employer is required to pay the additional actuarial cost to the 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 agency shall issue an invoice to the last employer representing the actuarial cost.

(b) If the member was employed by more than one (1) employer when the member retired, the actuarial cost to the 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 employers. Each of the member's last employers shall receive an invoice as provided in this subsection.

(c) An employer that receives an invoice may request that the agency allow the employer to pay the cost over a period, not to exceed one (1) year, without interest and the agency shall establish a payment plan for the employer.

(d) An employer that is required to pay the additional actuarial cost 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 and 78.545.

Section 4. Exemption Determination Process for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2) Exemptions shall include:

(a) Exemptions provided in KRS 61.598(4) and 78.545;

(b) A bona fide promotion or career advancement as defined in 105 KAR 1:001; or

(c) Overtime worked from May 28, 2020, through May 11, 2021, due to local government emergencies issued on or after May 28, 2020, but prior to October 5, 2020, regardless of whether or not the National Guard was mobilized for the entire period.

(3) If the agency review, as provided in Section 2 of this administrative regulation, determines that the member's creditable compensation in any of the last five (5) fiscal years increased by more than ten (10) percent compared to the immediately preceding fiscal year, the agency shall provide the member's employer the Form 6487, Request for Member Pension Spiking Exemption Amounts. If the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent, a Form 6487 shall not be provided.

(4) The employer shall complete and submit the valid Form 6487, Request for Member Pension Spiking Exemption Amounts, and provide supporting documentation as required by KRS 16.645, 61.675, and 78.625 by the end of day thirty (30) calendar days from the date the Form 6487 was provided.

(a) ~~For order~~ To indicate that none of 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 an exemption as provided in subsection (2) of this section, the employer shall select that none of the listed exemptions are applicable on the Form 6487.

(b)

1. ~~For order~~ To indicate that one (1) or more of 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 an exemption as provided in subsection (2) of this section, the employer shall select which of the listed exemption are applicable on the Form 6487. Except as provided in subsection (5)(a) of this section, the employer shall list the portion of the salary directly attributable to each exemption in the corresponding section of the Form 6487.

2.

a. ~~For order~~ To verify that one (1) or more salary increase is directly attributable to a bona fide promotion or career advancement, the employer shall provide a copy of the personnel form with the date of the promotion or advancement, an explanation, and documentation supporting the assertion that the increase in

creditable compensation resulted from a bona fide promotion or career advancement.

b. Effective July 1, 2024, ~~fin order~~ to verify that one (1) or more bona fide promotion or career advancement resulted from an increase in creditable compensation for all employees in a specified class due to an increase in rate of pay authorized or funded by the legislative or administrative body of the employer or due to an increase in rate of pay mandated in a collective bargaining agreement approved by the legislative body of the employer, the employer shall submit a copy of the personnel form with the date of increased rate of pay, an explanation, and documentation supporting the assertion that the increase in rate of pay was authorized or funded by the legislative or administrative body of the employer or mandated in a collective bargaining agreement approved by the legislative body of the employer.

c. ~~fin order~~ To verify that one (1) or more salary increase is directly attributable to overtime hours worked under a state or federal grant as prescribed in KRS 61.598(4)(e)1., a copy of the grant shall be submitted with the specific language in the grant requiring overtime highlighted or otherwise emphasized.

d. Except as provided in subsection (2)(c) of this section, ~~fin order~~ to verify that one (1) or more salary increase is directly attributable to a local state of emergency where the Kentucky National Guard was mobilized as prescribed in KRS 61.598(4)(f)2., the applicable Executive Order number that mobilized the National Guard shall be provided.

(5)

(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 in accordance with 105 KAR 1:140.

(b) If, upon review by the employer of the Form 6487, Request for Member Pension Spiking Exemption Amounts, 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 78.625.

(6)

(a) The agency may require the employer to provide additional information or require the employer to make certifications regarding the information and documentation submitted.

(b) In accordance with KRS 16.645, 61.675, and 78.625, the employer shall provide any additional information and certifications requested by the agency under this subsection by the end of day thirty (30) days from the date the request for additional information was provided.

(7)

(a) Following review of the completed Form 6487, Request for Member Pension Spiking Exemption Amounts, and any additional information and certifications, the agency shall make a final administrative decision in accordance with Section 5 of this administrative regulation.

(b) The agency shall issue a final administrative decision in accordance with Section 5 of this administrative regulation if:

1. A valid Form 6487 is not submitted timely in accordance with subsection (4) of this section; or
2. Additional information ~~is~~ requested in accordance with ~~that~~ subsection (6) of this section is not submitted timely.

Section 5. Final Administrative Decisions for Members with an Effective Retirement Date on or after January 1, 2018.

(1) This section shall only apply to members with an effective retirement date on or after January 1, 2018.

(2)

(a) If the agency determines an increase in creditable compensation of more than ten (10) percent over the immediately preceding fiscal year, as provided in Section 2 of this administrative regulation, is not directly attributable to any of the listed exemptions in Section 4(2) of this administrative regulation, and no reporting information needs to be corrected, then the increase in creditable compensation above ten (10) percent shall not be used to calculate the member's retirement allowance, unless the reductions in the member's creditable compensation would result in reduction to the member's monthly retirement allowance of less than twenty-five (25) dollars per month or the actuarial equivalent.

(b) The agency shall notify the member of the final administrative decision which shall provide the member's benefit adjustment details. If the member disagrees with the final administrative decision by the agency, he or she may appeal the decision in accordance with Section 6 of this administrative regulation.

(3) Pursuant to KRS 61.598(2)(c)2. and 78.545, the agency shall not issue a refund to the employer for the excess employer contributions. The agency 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.

(4)

(a) Pursuant to KRS 61.598(2)(c)1. and 78.545, 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.

1. Pre-tax member contributions shall be refunded to the member by the employer that picked-up the contributions.

2. Post-tax member contributions shall be refunded to the member directly by the agency.

3. Interest earned on pre-tax and post-tax member contributions shall be refunded to the member directly by the agency.

(b)

1. If a member files an appeal in accordance with Section 6 of this administrative regulation, the refunds indicated in this subsection shall be placed on hold during the pendency of the appeal.

2. No additional interest shall accrue during the pendency of the appeal.

Section 6. Appeal.

(1)

(a) For members with an effective retirement date on or after January 1, 2014, but prior to July 1, 2017, pursuant to KRS 61.645(16) and 78.782(16), if the employer disagrees with the final administrative decision in accordance with Section 3 of this administrative regulation, the employer shall file a written request for an administrative hearing pursuant to KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) In accordance with KRS 61.598(7) and 78.545, the employer's right to appeal is limited to the issue of whether the agency 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.

(c) Pursuant to KRS Chapter 13B.090(7), the employer has the burden to show its entitlement to the benefit of not paying the additional actuarial costs related to the

employer's appeal in accordance with this subsection, and the ultimate burden of persuasion on that issue.

(2)

(a) For members with an effective retirement date on or after January 1, 2018, pursuant to KRS 61.645(16) and 78.782(16), if the member disagrees with the final administrative decision by the agency in accordance with Section 5 of this administrative regulation, the member shall file a written request for an administrative hearing to be held in accordance with KRS Chapter 13B by the end of day thirty (30) calendar days from the date of the final administrative decision.

(b) The member's right to appeal is limited to the issue of whether the agency correctly determined that the annual increases in the member's creditable compensation were not due to one (1) of the exemptions found in KRS 61.598(4) and 78.545, and 105 KAR 1:001(14).

(c) Pursuant to KRS Chapter 13B.090(7), the agency has the burden to show the propriety of the agency action to remove or reduce benefits related to the member appeals in accordance with this subsection, and the ultimate burden of persuasion as to that issue.

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form 6481, "Employer Request for Post-Determination of Bona Fide Promotion or Career Advancement", ~~September~~June 2024; and

(b) Form 6487, "Request for Member Pension Spiking Exemption Amounts", ~~September~~June 2024.

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

(105 KAR 001:142. 51 Ky.R. 432, 864; eff. 2-4-2025; Recodified to 105 KAR 005:142; eff. 8-5-2026.)

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