

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 1:451. Quasi-governmental employer reports on independent contractors and leased employees.

RELATES TO: KRS 61.5991, 61.510, 61.543, 61.552, 61.645, 61.675, 61.685

STATUTORY AUTHORITY: KRS 61.5991(1)(c), 61.645(9)(e)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) requires the Board of Trustees of the Kentucky Retirement Systems to promulgate all administrative regulations necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652 and 61.510 to 61.705, and to conform to federal statutes and regulations. KRS 61.5991 requires certain employers that participate in the Kentucky Employees Retirement System to report information to the Kentucky Public Pensions Authority on some persons providing services for the participating employer as an independent contractor, a leased employee, or via any other similar employment arrangement. This administrative regulation establishes quasi-governmental employer reports on independent contractors and leased employees.

Section 1. Definitions.

- (1) "Contractor Wizard" means an online interactive form that guides employers to certify their non-contributing service providers by answering a series of questions broken into small, manageable steps.
- (2) "Core services independent contractor" means a person, either personally or through a company or other legal entity, who provides services for a quasi-governmental employer as an independent contractor, other than as a non-core services independent contractor.
- (3) "Core services leased employee" means a person who provides services for a quasi-governmental employer as a leased employee through a staffing company, other than as a non-core services independent contractor.
- (4) "Direct employment" means employees reported by the quasi-governmental employer in accordance with KRS 61.675 and 105 KAR 1:140.
- (5) "Noncompliant" means the quasi-governmental employer falsifies, fails to provide, or withholds all, or a portion of, the required documentation or information within the time periods prescribed by this administrative regulation.
- (6) "Non-core services independent contractor" is defined by KRS 61.5991(9).
- (7) "Other employment arrangement" means any written agreement between a quasi-governmental employer and a third party (including a person, company, or other legal entity) for one (1) or more persons to provide services for the quasi-governmental employer in exchange for the third party receiving monetary compensation, remuneration, or profit that is not:
 - (a) Direct employment;
 - (b) A non-core services independent contractor or a non-core service leased employee agreement; or
 - (c) A person that would be considered in a regular full-time position if the person were directly employed by the quasi-governmental employer.
- (8) "Prior fiscal year" means the fiscal year beginning July 1 that is immediately prior to the fiscal year in which the agency provides the report to the state budget director's office and the Legislative Research Commission required by KRS 61.5991(3).
- (9) "Quasi-governmental employer":
 - (a) Means an employer participating in the Kentucky Employees Retirement System that is a local or district health department governed by KRS Chapter 212, state-supported university or community college, mental health/mental retardation board,

domestic violence shelter, rape crisis center, child advocacy center, or any other employer that is eligible to voluntarily cease participation in the Kentucky Employees Retirement System as provided by KRS 61.522; and

(b) Does not include county attorneys, the Council on State Governments (CSG), the Kentucky Educational Television (KET) Foundation, Association of Commonwealth's Attorneys, the Kentucky High School Athletic Association (KHSAA), the Municipal Power Association of Kentucky, the Kentucky Office of Bar Admissions, the Nursing Home Ombudsman, the Kentucky Association of Regional Programs (KARP), and the Kentucky Association of Sexual Assault Programs.

Section 2. Required Annual Reporting.

(1)

(a) Quasi-governmental employers shall report all persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement:

1. For fiscal years July 1, 2021 through June 30, 2023, by completing and submitting a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, on or before the applicable deadline of the fiscal year in which the Form 6756 was required;

2. For fiscal year July 1, 2023 through June 30, 2024, by completing and submitting the initial Form 6756, Annual Employer Certification of Non-Contributing Service Providers, or the initial Contractor Wizard on or before April 15, 2024; and

3. Effective with the fiscal year beginning July 1, 2025, and for each fiscal year thereafter, by completing and submitting the initial Contractor Wizard on or before April 15 of the fiscal year in which the Contractor Wizard is required.

(b) If a quasi-governmental employer contracts with any additional persons to provide services as core services independent contractors, core services leased employees, or through any other employment arrangement after the submission of a completed Contractor Wizard or Form 6756, Annual Employer Certification of Non-Contributing Service Providers, as applicable in accordance with paragraph (a) of this subsection, the quasi-governmental employer shall:

1. For fiscal year July 1, 2023 to June 30, 2024, submit a completed supplemental Form 6756 or Contractor Wizard reflecting only those persons not previously reported on the initial Form 6756 or Contractor Wizard. The supplemental Form 6756 or Contractor Wizard shall be submitted on or before June 30, 2024.

2. Effective with the fiscal year beginning July 1, 2024, submit a completed supplemental Contractor Wizard reflecting only those persons not previously reported on the initial Contractor Wizard. The supplemental Contractor Wizard shall be submitted on or before June 30 of the fiscal year in which the Contractor Wizard is required.

(c) All documentation required by the initial or supplemental Form 6756 or Contractor Wizard shall be submitted with the Form 6756 or Contractor Wizard.

(2)

(a) The following persons providing services as core services independent contractors, core services leased employees, or through any other employment arrangement shall not be listed on an initial or supplemental Contractor Wizard:

1. Persons who would not qualify as an employee in a regular full-time position if directly employed by the quasi-governmental employer; and

2. Persons who would be in a position reported to another state-administered retirement system if directly employed by the quasi-governmental employer.

(b) On the initial or supplemental Contractor Wizard, Quasi-governmental employers:

1. Shall indicate the number of people who meet a reporting exemption as provided in Section 5 of this administrative regulation;
2. May choose to report persons who meet a reporting exemption as provided in Section 5 of this administrative regulation, and those persons shall be treated in the same manner as all other persons listed on the Contractor Wizard, including determinations by the agency under Section 3 of this administrative regulation; and
3. Provide documentation required by the Contractor Wizard for persons marked as meeting a reporting exemption.

(3)

- (a) After receiving an initial or supplemental Contractor Wizard, the agency may notify the quasi-governmental employer that additional information is required.
- (b) If additional information is required, the agency shall notify the quasi-governmental employer in writing to the attention of the agency head, appointing authority, or authorized designee, such as the reporting official, and shall include the following in its notification:
 1. A detailed description of the additional information required; and
 2. A deadline by which the additional information required shall be submitted, which shall not be less than fourteen (14) calendar days, but may be longer than fourteen (14) calendar days.
- (c) An initial or supplemental Contractor Wizard shall not be considered complete until all additional information requested by the agency is submitted.

(4)

- (a) Except as indicated in paragraph (b) of this subsection, a quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d) if:
 1. It fails to submit a valid Contractor Wizard as required by subsections (1) through (2) of this section;
 2. It submits an initial or supplemental Contractor Wizard without the documentation required by the Contractor Wizard; or
 3. It fails to submit additional information requested in accordance with subsection (4) of this section.
- (b) The quasi-governmental employer shall not be reported as noncompliant if, by the appropriate deadline provided in this section, it provides all missing information or documentation, including as applicable:
 1. A completed valid Contractor Wizard in accordance with subsections (1) and (2) of this section;
 2. The documentation required by the Contractor Wizard in accordance with subsections (1) and (2) of this section; or
 3. Additional information requested in accordance with subsection (3) of this section.

(5) During an audit of the quasi-governmental employer conducted in accordance with KRS 61.5991(2)(a)2., 61.675, and 61.685:

- (a) If the agency discovers that a quasi-governmental employer has failed to list all persons as required by this administrative regulation on the Contractor Wizard, or for reporting prior to fiscal year 2025, a Form 6756, Annual Employer Certification of Non-Contributing Service Providers, then the quasi-governmental employer shall be reported as noncompliant to the state budget director's office and the Legislative Research Commission in accordance with KRS 61.5991(2)(c) and 61.5991(3)(d).
- (b) If the agency discovers persons performing services as an independent contractor or leased employee for a quasi-governmental employer in multiple part-time positions that, if combined, constitute a regular full-time position, then the agency shall make a

determination of employee or independent contractor status in accordance with Section 3 of this administrative regulation.

Section 3. Determination of Employee or Independent Contractor.

(1) The agency shall have the authority to determine which persons listed on an initial and supplemental Contractor Wizard:

- (a) Shall be reported as employees in regular full-time positions; or
- (b) Are independent contractors.

(2) In determining whether a person listed on the initial and supplemental Contractor Wizard is an employee of the quasi-governmental employer or an independent contractor of the quasi-governmental employer, the agency:

- (a) Shall apply common law factors used by the Internal Revenue Service (IRS), in accordance with IRS Publication 1779; and
- (b) May consider rules issued by the United States Department of Labor under federal wage and hour law.

(3) If the agency determines that a person listed on an initial or supplemental Contractor Wizard is an employee of the quasi-governmental employer in a regular full-time position, then the quasi-governmental employer shall:

- (a) Remit all reports, records, contributions, and reimbursements for that person as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140 effective the calendar month after the agency has notified the quasi-governmental employer of its determination in accordance with Section 4 of this administrative regulation; and
- (b) For all periods during which the person was providing services to the quasi-governmental employer, submit:
 - 1. A valid Form 4225, Verification of Past Employment, for that person; and
 - 2. All relevant contracts and other documentation demonstrating the relationship between the quasi-governmental employer and the person.

(4) After reviewing the information from the quasi-governmental employer required by subsection (3)(b) of this section, if the agency determines that a person listed on an initial or supplemental Contractor Wizard was an employee of the quasi-governmental employer in a regular full-time position for previous periods that were not reported by the quasi-governmental employer in accordance with KRS 61.543, KRS 61.675, and 105 KAR 1:140, then:

- (a) The person shall be eligible to purchase omitted service in accordance with KRS 61.552(2) for the periods of his or her previous employment by the quasi-governmental employer in a regular full-time position; and
- (b) The quasi-governmental employer shall be responsible for payment of delinquent omitted employer contributions in accordance with KRS 61.552(2) and 61.675(3)(b) for all periods of the person's previous employment by the quasi-governmental employer in a regular full-time position.

Section 4. Notification to Employers of Determination of Employment Relationship.

(1) Each fiscal year quasi-governmental employers shall be notified by the agency of the determination of which persons shall be reported as employees in regular full-time positions no later than September 30 of the subsequent fiscal year.

(2)

- (a) The agency shall notify the quasi-governmental employer of the determination of which persons listed on an initial or supplemental Contractor Wizard shall be reported as employees in regular full-time positions in one (1) notification letter.
- (b) The notification shall be sent to the agency head, appointing authority, or authorized designee, such as the reporting official.
- (c) The notification shall include:

1. The name of each person who shall be reported as an employee in regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140;
2. A description of the contract or other documents for each person who shall be reported as an employee in a regular full-time position who are providing or have provided services to the quasi-governmental employer; and
3. A statement that all other persons listed on the initial or supplemental Contractor Wizard shall not be reported as employees in regular full-time positions.

Section 5. Reporting Exemptions.

(1) A person shall meet a reporting exemption if the person is providing professional services as a core services independent contractor, core services leased employee, or through any other employment arrangement if the person provides services:

- (a) As a non-core services independent contractor or non-core services leased employee;
- (b) That have not been performed by direct employees of the quasi-governmental employer since January 1, 2000 and have been or are being performed for the quasi-governmental employer under a contract on file at the retirement office and determined by the agency or the Kentucky Retirement Systems to represent services provided by an independent contractor; or
- (c) That are under an original contract with the person or a company entered into prior to January 1, 2021 if:
 1. The term of the original contract has not expired, and the contract has not been renewed or continued;
 2. The contract has not been modified to encompass different services; and
 3. The person was included in the original contract.

(2)

(a) When a quasi-governmental employer submits its Contractor Wizard in accordance with subsection (2) of this administrative regulation, it shall also submit the employment contract for people indicated as a reporting exemption, except as provided in paragraph (b)1. of this subsection.

(b) The agency shall review the contracts and determine if the person meets the requirements of a reporting exemption.

1. If a person is determined by the agency to meet a reporting exemption, the quasi-governmental employer shall not submit the contract in subsequent fiscal years as long as all terms and conditions of the approved contract remain unchanged.
2. If a person is determined by the agency to not meet a reporting exemption, the agency shall make a determination of employment status in accordance with Section 3 of this administrative regulation.

Section 6. Report to the State Budget Director's Office and the Legislative Research Commission.

(1)

(a) To determine the number of employees of the quasi-governmental employer reported for the prior fiscal year in accordance with KRS 61.5991(3)(a), the agency shall add together all employees in regular full-time positions reported by the quasi-governmental employer pursuant to KRS 61.675 and 105 KAR 1:140 in the prior fiscal year.

(b) Persons listed on an initial or supplemental Contractor Wizard for the prior fiscal year who are ultimately determined by the agency to be employees of the quasi-governmental employer in regular full-time positions shall not be included in the number of employees of the quasi-governmental employer for the prior fiscal year. These persons shall be included in the number of employees of the quasi-governmental employer in a regular full-time position for a subsequent fiscal year if the person is

reported by the quasi-governmental employer in the subsequent fiscal year as an employee in a regular full-time position in accordance with KRS 61.675 and 105 KAR 1:140.

(2) To determine the number of persons providing services to the quasi-governmental employer who were not reported for the prior fiscal year in accordance with KRS 61.5991(3)(b), the agency shall use the total number of persons listed on initial and supplemental Contractor Wizards for the prior fiscal year.

(3) The agency shall report the following information for each quasi-governmental employer determined to have falsified data or been noncompliant in accordance with KRS 61.5991(3)(d):

(a) The name of the quasi-governmental employer;

(b) A description of the type of data falsified and the support the agency has for believing the data to be falsified, if applicable; and

(c) A description of the nature of the noncompliance, if applicable.

Section 7. Retired Reemployed. A retired member who is reemployed with a quasi-governmental employer providing services through an independent contractor, leased employee, or through any other employment arrangement shall also comply with KRS 61.637, 78.5540, and 105 KAR 1:390, including employees:

(1) In participating positions and non-participating positions; and

(2) Not reported on the Contractor Wizard.

Section 8. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Contractor Wizard", May 2024;

(b) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2023;

(c) Form 4225, "Verification of Past Employment", March 2024; and

(d) Form 6756, "Annual Employer Certification of Non-Contributing Service Providers", September 2021.

(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, 8:00 a.m. to 4:30 p.m. This material is also available on the agency's Web site at kyret.ky.gov.

JOHN CHILTON, CEO

APPROVED BY AGENCY: June 25, 2024

FILED WITH LRC: November 8, 2024 at 10:35 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing to allow for public comment on this administrative regulation shall be held on Tuesday, January 21, 2025, at 10:00 a.m. Eastern Time at the Kentucky Public Pensions Authority (KPPA), 1270 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in presenting a public comment at this hearing shall notify this agency in writing no later than five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until January 31, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jessica Beaubien, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, phone (502) 696-8800 ext.

8570, fax (502) 696-8615, email Legal.Non-Advocacy@kyret.ky.gov.