KENTUCKY PUBLIC PENSION AUTHORITY

Employers

(Amendment)

105 KAR 4:148. Merged, split, new, separate, or separated employers or entities.

RELATES TO: KRS 61.520, 61.522, 61.565, 61.645, 61.675, 61.685, 212.132

STATUTORY AUTHORITY: KRS 61.565(1)(d)4., 61.645(9)(e)

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(e) authorizes 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. As required by KRS 61.565(1)(d)4., this administrative regulation establishes the procedures and requirements for the process of assigning actuarially accrued liability contributions for a Kentucky Employees Retirement System employer that, on or after March 23, 2021, merges with another employer or entity, forms a new or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 1. Definitions.

(1) "Actuarially accrued liability" means a prorated annual dollar contribution amount for employers with employees that have participated in or are participating in the system on or after July 1, 2021, that is based on the individual employer's percentage of the system's total actuarially accrued liability as of June 30, 2019, and determined pursuant to KRS 61.565(1)(d)1.

(2) "Assign" means the transfer of legal and financial responsibility for paying the actuarially accrued liability to another participating or non-participating employer.

(3) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.

(4) "Merged employer" means one (1) or more participating employers with an actuarially accrued liability that have merged or have plans to merge with one (1) or more participating or non-participating employers into a new single entity or under the name of one (1) of the participating or non-participating employers that are part of the merger.

(5) "New or separate employer" means:

(a) A participating employer with an actuarially accrued liability that forms, becomes, or is bought out by a non-participating employer; or

(b) A participating employer with an actuarially accrued liability that dissolves or becomes an inactive employer and one (1) or more distinct entities assumes responsibility for a portion or all of the business of the inactive employer or participating employer that has dissolved.

(6) "Non-participating employer" means an entity that does not participate in the system.

(7) "Participating employer" means an employer that participates in the system.

(8) "Split or separated employer" means a participating employer with an actuarially accrued liability that divides into two (2) or more distinct entities.

(9) "Submit" means an employer required form, documentation, report, or payment has been received by the retirement office via mail, fax, electronic mail, the Employer Self Service Web site, or other mode specifically detailed in this administrative regulation.

(10) "System" means the Kentucky Employees Retirement System.

Section 2. Retroactive Effective Date of Application. This administrative regulation applies to the actuarially accrued liability of any participating employer that on or after March 23, 2021 pursuant to KRS 61.565(1)(d)4., merges with another employer or entity, forms a new

or separate employer or entity, or splits or separates operations into multiple employers or entities.

Section 3. Actuarially Accrued Liability Assignment.

(1)

(a) Except as provided in paragraphs (b) and (c) of this subsection, if, on or after March 23, 2021, a participating employer that has an actuarially accrued liability becomes a merged employer, new or separate employer, or split or separated employer, the agency shall have full authority to assign a portion or all of the total actuarially accrued liability of the participating employer to:

1. The merged, new, split, separate, or separated participating employer or the merged non-participating employer; or

2. Another participating employer that voluntarily requests assignment of a portion or all of the total actuarially accrued liability of the participating employer under Section 8(2)(c) of this administrative regulation.

(b) Employers that pay the costs to cease participation in the system as provided by KRS 61.522 are not subject to the provisions of paragraph (a) of this subsection.

(c) If a district health department ceases to operate or has a county or counties that withdraw from the district health department, the agency shall assign the total actuarially accrued liability contribution based upon the proportion of taxable property of each county as certified by the Department for Public Health in the Cabinet for Health and Family Services in accordance with KRS 212.132.

(2) The effective date of the new assignment of actuarially accrued liability shall be the latter of:

(a) The first day of the month following the completion of the merger, split, separation, or formation of a new participating employer; or

(b) March 23, 2021.

(3) If a merged, new, split, separate, or separated participating employer or the merged non-participating employer fails to pay in full an actuarially accrued liability assigned to it pursuant to this administrative regulation and KRS 61.565, the agency may pursue all available remedies, including actions such as those set forth in KRS 61.675(4), and civil payments, legal fees, and costs in accordance with KRS 61.685(3).

Section 4. Notification of Merge, Split, Separating, or New Entity.

(1)

(a) Prior to beginning the formal process or merging, splitting, separating, or becoming a new entity, a participating employer that has an actuarially accrued liability shall submit a written notification of the participating employer's intended merger, split, separation, or formation of a new entity. The written notification shall be on the participating employer's official letterhead.

(b) Following receipt of the notification required by paragraph (a) of this subsection, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

(2) If the agency becomes aware, through any means, that a participating employer that has an actuarially accrued liability has merged, split, separated, or become a new or separate entity, and the participating employer failed to submit a written notification in compliance with subsection (1)(a) of this section, the agency shall make the relevant determination under Sections 5 through 9 of this administrative regulation.

Section 5. Merged Employers.

(1) The agency shall determine whether two (2) or more participating employers, or one (1) or more participating employer and one (1) or more non-participating employer, have become a merged employer on or after March 23, 2021.

(2) If two (2) or more participating employers with an actuarially accrued liability combine into a new single merged employer, then:

(a) The merged employer shall take the necessary steps to participate in the system in accordance with KRS 61.520; and

(b) The entire actuarially accrued liability shall be assigned to the merged employer.

(3)

(a) If one (1) or more participating employers with an actuarially accrued liability combines with one (1) or more non-participating employer into a new single merged employer, then:

1. The merged employer may be required to take the necessary steps to participate in the system in accordance with KRS 61.520, as determined by the agency; and

2. The entire actuarially accrued liability shall be assigned to the merged employer.

(b) The agency shall have the authority to determine whether a merged employer as described in paragraph (a) of this subsection shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 6. New or Separate Employers.

(1) The agency shall determine whether one (1) or more new or separate employers have been created on or after March 23, 2021.

(2)

(a) Except as provided in paragraph (b) of this subsection, the entire actuarially accrued liability of the original participating employer that becomes the new or separate employer shall be assigned to the new or separate employer.

(b) If multiple new or separate employers have been created on or after March 23, 2021, the actuarially accrued liability calculated for the original participating employer shall be divided by the number of new or separate employers and an equal portion of the actuarially accrued liability shall be assigned to each new or separate employer.

(3) The agency shall have the authority to determine whether each new or separate employer as described in subsection (1) of this section shall be required to or may take the necessary steps to participate in the system in accordance with KRS 61.520.

Section 7. Split or Separated Employers.

(1) The agency shall determine whether split or separated employers have been created on or after March 23, 2021.

(2) Split or separated employers shall be required to take the necessary steps to participate in the system in accordance with KRS 61.520.

(3) Each split or separated employer shall be assigned a share of the actuarially accrued liability calculated for the original participating employer based on the percentage of participating employees of each split or separated employer.

Section 8. Inactive Employers.

(1) The agency shall determine whether a participating employer is an inactive employer.

(2) Except as provided in paragraphs (a) through (c) of this subsection, the actuarially accrued liability calculated for the inactive employer shall remain assigned to the inactive employer.

(a) If the inactive employer becomes part of a merged employer on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 5 of this administrative regulation.

(b) If, relevant to the inactive employer, a new or separate employer is created on or after March 23, 2021, the actuarially accrued liability of the inactive employer shall be assigned as described in Section 6 of this administrative regulation.

(c) If one (1) or more other entities voluntarily requests that the agency assign it all or part of the actuarially accrued liability of the inactive employer, the actuarially accrued

liability of the inactive employer shall be assigned by the agency to the other entities.

Section 9. Other Similar Circumstances. Employers whose circumstances do not fit exactly into merged, new, split, separate, or separated participating employer, or merged non-participating employer as identified in Sections (5) through (8) of this administrative regulation, but have similar circumstances, shall be individually evaluated by the agency. The agency shall determine which section of this administrative regulation closest matches the employer circumstances and shall administer in accordance with the identified section.

Section 10. Enforcement. Any participating employer or non-participating employer that has been assigned an actuarially accrued liability pursuant to this administrative regulation shall be subject to KRS 61.675(4) for the purposes of the actuarially accrued liability.
(105 KAR 001:148. 50 Ky.R. 1207, 1653; eff. 5-7-2024; Recodified to 105 KAR 004:148; eff. 8-5-2026.)