

FINANCE AND ADMINISTRATION CABINET
Kentucky Public Pensions Authority
(Amendment)

105 KAR 5:390. Employment after retirement.

RELATES TO: KRS 15.420(2)(a), 16.010, 16.505, 61.505, 61.510, 61.565, 61.590, 61.637, 61.675, 61.702, 70.291 - 70.293, 78.510, 78.545, 78.5540, 78.625, 78.635, 95.022, 158.441, 164.952, 26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 61.505(1)(g), 61.590, 61.637(18), 78.5540(5)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with KRS 13A.150(2) because it does not have a major economic impact.

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, 61.505, 61.510 to 61.705, and 78.510 to 78.852. KRS 61.637(18) and 78.5540(5) ~~require~~requires the Kentucky Public Pensions Authority to promulgate administrative regulations to implement~~the requirements of~~ KRS 61.637 and 78.5540. This administrative regulation concerns the administration of KRS 61.637 and 78.5540 in conjunction with federal law regarding bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its statutes and administrative regulations (plan documents) how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

Section 1. Definitions. The definitions established in this section apply only for the purposes of this administrative regulation.

(1) "Bona fide separation from service" means:

(a) A cessation of the employment relationship between the member and the member's employer; and

(b) There is no prearranged agreement.

(2) "Employee" means a retired member who is performing services for any~~an~~ employer participating in the Kentucky Employees Retirement System, the County Employees Retirement System, or the State Police Retirement System in a manner that demonstrates an employment relationship under the common law factors used by the Internal Revenue Service (IRS) established in Section 4(3)(d)1. of this administrative regulation.

(3) ~~["Non-participating position" means any position of employment with a participating employer other than a regular full-time position or a regular full-time officer position.]~~

~~[(4)] ["Participating position" means a regular full-time position or a regular full-time officer position.]~~

~~[(5)]~~ "Prearranged agreement" means a verbal or written, explicit or implicit agreement:

(a) That occurred prior to the retired member's effective retirement date;

(b) Between the retired member and;

1. His ~~his~~ or her former employer regarding any position with the former employer; or

2. Any participating employer other than a former employer regarding a regular full-time position; and

(c) ~~That [for] the retired member would[to] reemploy[with the employer] within twelve (12) months after the retired member's effective retirement date[; and]~~

~~[(b)] [That occurred prior to the retired member's effective retirement date.]~~

~~[(6)] ["Retirement date" means the member's effective retirement date as described in KRS 61.590(5) and 78.545(4)].~~

(4) "Statutory officer" means:

(a) An elected officer or appointed board member other than a regular full-time employee who receives no compensation for services other than a per diem not to exceed five hundred dollars (\$500) per month and reimbursement of actual expenses;
or

(b) A precinct election officer appointed pursuant to KRS 117.045.

Section 2. Form 6000 Certification.

(1) In order to retire with the systems, an eligible member shall complete and file a valid Form 6000, Notification of Retirement, incorporated by reference in 105 KAR 5:202, which shall comply with the requirements of KRS 61.590, KRS 78.545, and 105 KAR 5:200.

(2) The agency shall not process a Form 6000~~[, Notification of Retirement,]~~ until the member certifies on the Form 6000 that there is no prearranged agreement for reemployment with any[a] participating employer after the member's retirement date.

Section 3. Employment After Retirement.

(1) A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions, shall have a:

(a) Bona [A-bona] fide separation from service as defined in Section 1 of this administrative regulation; and

(b) Break [A-break] in service as provided in subsection (3) of this section.

(2)

~~(a) [A retired member who is reemployed with a participating employer in any position, including participating positions and non-participating positions shall not have a prearranged agreement.]~~

~~[(b)] An elected official who is reelected and takes office in the same elected position that[as] he or she held prior to retirement within twelve (12) months after his or her effective retirement date shall be deemed to have a prearranged agreement.~~

(b) A candidate for an elected office who retires between the date of the regular or special election at which he or she is the successful candidate and the beginning of the term of office to which he or she has been elected shall be deemed to have a prearranged agreement.

(3) "Break in service" as provided in this section shall require that:

(a) For effective retirement dates prior to January 1, 2024:

1. A member who retired from a hazardous position shall have a one (1) month break in service before returning to work with any participating employer in a regular full-time hazardous participating position.

2. Except as provided in subparagraph 1. of this paragraph, a member who retired from a hazardous or nonhazardous position shall have a three (3) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(b) For effective retirement dates beginning January 1, 2024, a member who retired from a hazardous or nonhazardous position shall have a one (1) month break in service before returning to work with any participating employer in a participating or nonparticipating position.

(4) ~~A [H-a]~~ retired member who seeks reemployment with a participating employer within twelve (12) months of his or her retirement date shall have on file prior to the beginning of his or her reemployment~~[, then the following shall be filed]~~:

(a) A valid Form 6751, Employer Certification Regarding Reemployment, completed by the participating employer, which shall certify that there was no prearranged agreement;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and

(c) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).

(d) If a retired member or his or her employer fail to submit information requested by the agency or valid forms required by this administrative regulation within thirty (30) days of an agency request or notice that a form is invalid, the agency shall notify the retired member that the member's request was not approved without prejudice to the retired member's ability to resubmit a valid request for approval of the reemployment.

(5)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and additional requested information.

(b) If the agency determines that the retired member failed to comply with any of the requirements of this section or federal law, the retired member's retirement shall be voided and he or she shall repay all retirement allowances, dependent child payments, and hospital and medical insurance plan premiums paid by the systems.

Section 4. Independent Contractors and Leased Employees.

(1) ~~A [H-a]~~ retired member who seeks to provide services to a participating employer as an independent contractor, under a professional services contract, or as a leased employee within twelve (12) months of the retired member's retirement date shall have on file~~[, then the following shall be filed]~~:

(a) A valid Form 6752, Employer Certification of Independent Contractor/Leased Employee, completed by the participating employer;

(b) A valid Form 6754, Member Reemployment Certification, completed by the retired member;

(c) A complete copy of any contract under which services are provided by the retired member to the participating employer; and

(d) Any other information requested by the agency from the participating employer and the retired member pursuant to KRS 61.637(9) and 78.5540(2)(b).

(2) The agency shall apply common law factors used by the ~~IRS [Internal Revenue Service (IRS)]~~ in accordance with IRS Publication 1779, Independent Contractor or Employee and Revenue Ruling 87-41, established in Section 4(3)(d)1. of this administrative regulation, to determine whether a retired member is an employee or an independent contractor of the participating employer~~[or an independent contractor of the participating employer]~~. 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 law.

(3)

(a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receiving~~[receipt of]~~ all required forms and requested information.

(b) If the agency determines that the retired member is an employee of the participating employer and not~~[, rather than]~~ an independent contractor or leased employee through a leasing company, staffing agency, or other entity:

1. The retired member shall comply with~~be subject to the provisions of~~ Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and
2. The employer shall:
 - a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 4:140;
 - b. Pay employer contributions for the retired member as established in~~specified by~~ KRS 61.565, 61.702, and 78.635; and
 - c. Reimburse the systems for the cost of hospital and medical insurance plan premiums paid by the systems for the retired member.
- (c) If the agency determines that the retired member is an independent contractor or leased employee through a leasing company, staffing agency, or other entity, the retired member ~~shall~~may still be required to observe a ~~break in~~bona fide separation from service to the extent required by federal law if the change in the employment relationship is merely superficial in nature.
- (d) To determine whether the change in the employment relationship is superficial, the agency shall consider:
 1. The common law factors established in federal Revenue Ruling 87-41 to determine if a person is an independent contractor or leased employee, including the extent to which the employer maintains any behavioral or financial control, and the actual change to the relationship of the parties;
 2. Any change in duties between the retired member's last employed position and the proposed duties as a contractor or leased employee, including the extent to which the employee continued providing services to the participating employer; and
 3. The relationship between the participating employer and the leasing company, staffing agency, or other entity.

Section 5. Volunteers.

- (1) ~~A~~ If a retired member who seeks to volunteer with a participating employer within twelve (12) months of the retired member's retirement date shall have on file~~, then the following shall be filed~~:
 - (a) A valid Form 6753, Employer Certification of Volunteer, completed by the participating employer;
 - (b) A valid Form 6754, Member Reemployment Certification, completed by the retired member; and
 - (c) Any other information requested by the agency from the participating employer and retired member pursuant to KRS 61.637(8) and 78.5540(2)(a).
- (2)
 - (a) The agency shall issue a final determination to the retired member no later than thirty (30) calendar days after receipt of all required forms and requested information.
 - (b) If the ~~agency~~Agency determines that the retired member is an employee of the participating employer, rather than a volunteer:
 1. The retired member shall comply with~~be subject to the provisions of~~ Section 3 of this administrative regulation and shall have a "bona fide separation from service" and "break in service"; and
 2. The employer shall:
 - a. Report the retired member as required by KRS 61.675, 78.625, and 105 KAR 4:140;
 - b. Pay employer contributions for the retired member as specified by KRS 61.565, 61.702, and 78.635; and
 - c. Reimburse the systems for the cost of hospital and medical insurance plan premiums paid by the systems for the retired member.

(c) If the agency determines that the retired member is a volunteer, the retired member ~~shall~~~~may still~~ be required to observe a break in~~bona fide separation from~~ service to the extent required by federal law if, prior to the member's retirement date, the retired member:

1. Received creditable compensation from the employer;
2. Received any reimbursement or nominal fee from the employer that was credited as creditable compensation to the member's account; or
3. Purchased or received service credit for service from the participating employer for which the retired member is performing volunteer services.

(3) The agency shall determine the need for a statutory officer to have a bona fide separation from his or her position as a statutory officer or the ability to reemploy as a statutory officer pursuant to the criteria established in this section unless the retired member elects to be deemed an employee for the purposes of this administrative regulation.

Section 6. Hospital and Medical Insurance Plan Premium Reimbursements for Retired Members Reemployed by Multiple Participating Employers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2) ~~When~~ ~~if~~ a retired member is reemployed by multiple participating employers in a month in two (2) or more regular full-time positions, one (1) regular full-time position and one (1) or more part-time positions pursuant to KRS 61.680(6) and 78.545, or multiple part-time positions pursuant to KRS 61.680(6) and 78.545, ~~each, then:~~

~~(a) Each~~ participating employer shall reimburse~~be responsible for reimbursing~~ the systems for a portion of the hospital and medical insurance plan premium paid by the systems to provide coverage for the retired member for that month~~;~~ ~~and~~

~~(b) The portion shall be~~ equal to the cost of the premium divided by the number of participating employers that are not exempt from reimbursement of hospital and medical insurance plan premiums.

(3) Participating employers that are exempt from reimbursement of hospital and medical insurance plan premiums pursuant to~~under~~ Section 7 of this administrative regulation, or~~by virtue of being~~ a school board employing the retired member for eighty (80) calendar days or less during the fiscal year, shall not be~~are not~~ responsible for hospital and medical insurance plan premiums under this section.

Section 7. Exemption for Payment ~~of~~~~Of~~ Employer Contributions and Reimbursement of Hospital and Medical Insurance Plan Premiums for Retired Members Reemployed as Police Officers and School Resource Officers.

(1) This section shall only apply to a retired member who is reemployed by a participating employer on or after September 1, 2008 in accordance with KRS 61.637(17) and 78.5540(4).

(2) A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of hospital and medical insurance plan premiums for a retired member reemployed in the positions established in this section if the applicable valid form and supporting documentation established in subsections 4 through of this section are:

(a) On file prior to the start of the retired member's term of employment, the employer exemption shall be for a term of appointment of no more than one (1) year; or

(b) Not on file prior to the start of the retired member's term of employment, the employer exemption shall be effective in the month after the applicable valid form and supporting documentation are on file.

(3) A participating employer shall not be exempt from paying employer contributions and reimbursement of hospital and medical insurance plan premiums if the forms established in subsection 4 of this section are not on file with the agency.

(4) The employer shall file valid forms established in this section for a:

(a) Police officer pursuant to KRS 70.921 to 70.293:

1. Form 6770, Certification and Appointment of Retired Law Enforcement Officer, for initial appointment; and

2. Form 6774, Recertification of Retired Law Enforcement Officer, for each subsequent term of reappointment.

(b) School resource officer pursuant to KRS 158.441, Form 6755, Appointment of Retired School Resource Officer.

(c) Kentucky State Police school resource officer pursuant to KRS 158.441, Form 6767, Appointment of Retired Postsecondary Institution or School Resource Officer.

(d) Police officer employed by a postsecondary institution pursuant to KRS 164.952, Form 6767.

(e) Police officer pursuant to KRS 95.022:

1. Form 6770; and

2. Form 6774, for each subsequent term of reappointment.

Section 8. Ceased Employers.

(1) Employees of a voluntarily ceased employer shall comply with 105 KAR 4:145, Sections 8 and 9.

(2) Employees of an involuntarily ceased employer shall comply with 105 KAR 4:147.

~~{(2)}~~

~~{(a)} [A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of appointment of no more than one (1) year if a valid Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are on file prior to the start of the retired member's term of appointment.]~~

~~{(b)} [If a valid Form 6760, County Police or Sheriff Appointment of Retired Police Officer, and the supporting documentation required by the Form 6760 are not on file prior to the start of the retired member's term of appointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid Form 6760 and supporting documentation are on file.]~~

~~{(3)}~~

~~{(a)} [For each subsequent term of reappointment after the initial term of appointment listed on the valid Form 6760, County Police or Sheriff Appointment of Retired Police Officer, described in subsection (1) of this section, the participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 for a term of reappointment of no more than one (1) year if a valid Form 6764, Recertification of Retired Police Officer, is on file prior to the start of the retired member's term of reappointment.]~~

~~{(b)} [If a valid Form 6764, Recertification of Retired Police Officer, is not on file prior to the start of the retired member's term of reappointment as a police officer pursuant to KRS 70.291 to 70.293, then the participating employer shall be exempt from paying~~

~~employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 70.291 to 70.293 effective in the month after a valid Form 6764 and supporting documentation are on file.]~~

~~[(4)]~~

~~[(a)] [A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan premiums paid by the systems to provide coverage for a retired member reemployed as a school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are on file prior to the start of the retired member's term of appointment.]~~

~~[(b)] [If a valid Form 6766, Appointment of Retired School Resource Officer, and the supporting documentation required by the Form 6766 are not on file prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a school resource officer pursuant to KRS 158.441 effective in the month after a valid Form 6766 and supporting documentation are on file.]~~

~~[(5)]~~

~~[(a)] [A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan premiums paid by the systems for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 for a term of appointment of no more than one (1) year if a valid Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are on file prior to the start of the retired member's term of appointment.]~~

~~[(b)] [If a valid Form 6767, Appointment of Kentucky State Police School Resource Officer, and the supporting documentation required by the Form 6767 are not on file prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a Kentucky State Police school resource officer pursuant to KRS 158.441 effective in the month after a valid Form 6767 and supporting documentation are on file.]~~

~~[(6)]~~

~~[(a)] [A participating employer shall be exempt from paying employer contributions and from reimbursing the systems for the cost of the hospital and medical insurance plan premiums paid by the systems for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 for a term of appointment of no more than one (1) year if a valid Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are on file prior to the start of the retired member's term of appointment.]~~

~~[(b)] [If a valid Form 6768, Postsecondary Institution Appointment of Retired Police Officer, and the supporting documentation required by the Form 6768 are not on file prior to the start of the retired member's term of appointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a police officer by a postsecondary institution pursuant to KRS 164.952 in the month after a valid Form 6768 and supporting documentation are on file.]~~

~~[(7)] [A participating employer shall not be eligible for exemption from payment of employer contributions or from reimbursing the systems for the costs of hospital and~~

~~medical insurance plan premiums for any retired members reemployed as a police officer pursuant to KRS 95.022 unless a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, is on file.]~~

~~[(8)]~~

~~[(a)] [A participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and from reimbursing the systems for the costs of hospital and medical insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of appointment of no more than one (1) year if a valid Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are on file prior to the start of the retired member's term of appointment.]~~

~~[(b)] [If a valid Form 6770, City Appointment of Retired Police Officer, and the supporting documentation required by the Form 6770 are not on file prior to the start of the retired member's term of appointment, then the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for a retired member reemployed as a police officer pursuant to KRS 95.022 effective in the month after a valid Form 6770 and supporting documentation are on file.]~~

~~[(9)]~~

~~[(a)] [For each subsequent term of reappointment after the initial term of appointment listed on the valid Form 6770, City Appointment of Retired Police Officer, described in subsection (7) of this section, the participating employer with a valid Form 6769, Certification of Employed Police Officers Calendar Year 2015, on file shall be exempt from paying employer contributions and hospital and medical insurance plan premiums paid by the systems for a retired member reemployed as a police officer pursuant to KRS 95.022 for a term of reappointment of no more than one (1) year if a valid Form 6774, City Recertification of Retired Police Officer, is on file prior to the start of the retired member's term of reappointment.]~~

~~[(b)] [If a valid Form 6774, City Recertification of Retired Police Officer, is not on file prior to the start of the retired member's term of reappointment, then the participating employer shall be exempt from paying employer contributions and reimbursements of hospital and medical insurance plan premiums for retired member reemployed as a police officer pursuant to KRS 95.022 in the month after a valid Form 6774 is on file.]~~

~~[(10)] [If the appropriate form as required by this section is not on file, then the employer shall not be exempt from paying employer contributions and reimbursement of hospital and medical insurance plan premiums.]~~

Section 9. Exemptions. Reemployment pursuant to KRS 61.637 or 71.5540 shall not apply, and agency preapproval shall not be required, if a retired member:

(1) Who has had a break in service as established in Section 3 of this administrative regulation is deposed or otherwise provides testimony relating to the retired member's prior employment and accepts a witness fee and reimbursement of expenses for testimony and preparation; or

(2) Is employed during the retired member's break in service established in Section 3 of this administrative regulation by a business entity that has a contract with a participating employer, if:

(a) The retired member has no ownership interest in the business entity;

(b) Less than fifty percent (50%) of the retired member's working time will be spent providing services for participating employers; and

- (c). The business entity was not created by and does not share ownership or management with a participating employer; or
(3) Is employed by an individual who is receiving Social Security Act, Section 1915(c) Medicaid waiver services through a participant-directed services program administered by the Cabinet for Health and Family Services.

Section 10. [Section 8.] Incorporation by Reference.

- (1) The following material is incorporated by reference:
- (a) ~~[Form 6000, "Notification of Retirement", June 2023;]~~
 - ~~[(b)]~~ Form 6751, "Employer Certification Regarding Reemployment", December 2023;
 - (b) ~~[(e)]~~ Form 6752, "Employer Certification of Independent Contractor/Leased Employee", September 2026~~[December 2023];~~
 - (c) ~~[(d)]~~ Form 6753, "Employer Certification of Volunteer", December 2023;
 - (d) ~~[(e)]~~ Form 6754, "Member Reemployment Certification", December 2023;
 - ~~[(f)]~~ ~~[Form 6760, "County Police or Sheriff Appointment of Retired Police Officer", December 2023;]~~
 - ~~[(g)]~~ ~~[Form 6764, "Recertification of Retired Police Officer", December 2023;]~~
 - ~~[(h)]~~ ~~[Form 6766, "Appointment of Retired School Resource Officer", December 2023;]~~
 - (e) ~~[(i)]~~ Form 6767, "Appointment of Retired Postsecondary Institution or~~[Kentucky State Police]~~ School Resource Officer", September 2026~~[December 2023];~~
 - ~~[(j)]~~ ~~[Form 6768, "Postsecondary Institution Appointment of Retired Police Officer", December 2023;]~~
 - ~~[(k)]~~ ~~[Form 6769, "Certification of Employed Police Officers Calendar Year 2015", December 2023;]~~
 - (f) ~~[(l)]~~ Form 6770, "Certification and~~[City]~~ Appointment of Retired Law Enforcement~~[Police]~~ Officer", September 2026~~[December 2023];~~
 - (g) ~~[(m)]~~ Form 6774, "[City] Recertification of Retired Law Enforcement~~[Police]~~ Officer", September 2026~~[December 2023; and]~~
 - (h) ~~[(n)]~~ Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2023; and
 - (i) Internal Revenue Service Ruling 87-41, January 1987.
- (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 8:00 a.m. to 4:30 p.m. This material is also available on the agency's website~~[Authority's Web site]~~ at kyret.ky.gov.
- (3) Internal Revenue Service Publication 1779, "Independent Contractor or Employee", March 2023, is also available at <https://www.irs.gov/pub/irs-pdf/p1779.pdf>.
- (4) Internal Revenue Service Ruling 87-41, January 1987, is also available at https://bradfordtaxinstitute.com/Endnotes/Rev_Rul_87-41.pdf.

105 KAR 5:390 Employment after retirement. Is approved for filing.
RYAN BARROW, Executive Director

APPROVED BY AGENCY: September 25, 2026

FILED WITH LRC: September 29, 2026 at 8:50 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 21, 2026 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 (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the

hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 through December 31, 2026 and shall receive the same consideration as verbal comments. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation, to the contact person. KPPA shall file a response with the Regulations Compiler to any public comments received, whether at the public comment hearing or in writing, via a Statement of Consideration no later than the 15th day of the month following the end of the public comment period, or upon filing a written request for extension, no later than the 15th day of the second month following the end of the public comment period.

CONTACT PERSON: Carole J. Catalfo, Policy Specialist, Kentucky Public Pensions Authority, 1260 Louisville Road, Frankfort, Kentucky 40601, Phone (502) 696-8679, Fax (502) 696-8615, Email: Legal.Non-Advocacy@kyret.ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Carole J. Catalfo, **Phone:** (502) 696-8679, **Email:** Legal.Non-Advocacy@kyret.ky.gov

Subject Headings:

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation administers KRS 61.637 and 78.5540 in conjunction with federal law by establishing criteria, requirements, and procedures for bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to administer KRS 61.637 and 78.5540 in conjunction with federal law by establishing criteria, requirements, and procedures for bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. This regulation is also necessary to maintain the tax qualified status of plans administered by KPPA pursuant to federal law.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 61.637(18) and 78.5540(5) require the Kentucky Public Pensions Authority to promulgate administrative regulations to implement KRS 61.637 and 78.5540. This administrative regulation administers KRS 61.637 and 78.5540 in conjunction with federal law by establishing criteria, requirements, and procedures for bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide documents addressing how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of KRS 61.637 and 78.5540 in conjunction with federal law by establishing criteria, requirements, and procedures for bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority, and maintaining the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and complying with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment to this administrative regulation refines definitions for "employee" and "prearranged agreement"; adds a definition for "statutory officer"; includes statutory language regarding prearranged agreements for elected officials and candidates for office; clarifies deadlines for information submission and that failing to submit valid forms or agency requests for information will not prejudice a member's ability to resubmit a valid request for approval of reemployment; added a section establishing employer exemptions from paying employer contributions; adds ceased employer procedures; establishes employment relationships to which the administrative regulation will not apply; streamlines and revises language to comply with drafting requirements; and condenses materials incorporated by reference to eliminate five related forms.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to clarify definitions, incorporate statutory language regarding elected officials and candidates for office, clarify deadlines for information submission and criteria the agency will consider in determining independent contractor, leased employee, and volunteer status, clarify employer exemptions from employer contributions, establish employment relationships to which the administrative regulation will not apply, streamline and revise language to comply with drafting requirements, and condense materials incorporated by reference to eliminate five related forms. (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 61.637(18) and 78.5540(5) require the Kentucky Public Pensions Authority to promulgate administrative regulations to implement KRS 61.637 and 78.5540. This administrative regulation administers KRS 61.637 and 78.5540 in conjunction with federal law by establishing criteria, requirements, and procedures for bona fide separation from service and changes in employment relationship if a retired member returns to employment with a participating employer in a retirement system operated by the Kentucky Public Pensions Authority. 26 C.F.R. 1.401-1(a)(2) requires that a qualified plan expressly provide in its plan documents how it shall administer its plan in accordance with federal law in order to maintain the tax qualified status of the plan. This administrative regulation is necessary to maintain the tax qualified status of the Kentucky Employees Retirement System, the County Employees Retirement System, and the State Police Retirement System under 26 U.S.C. 401(a), and to comply with the provisions established in 26 C.F.R. 1.401-1(b)(1)(i) and 1.401(a)-1.

(c) How the amendment conforms to the content of the authorizing statutes:

No answer provided.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment to this administrative regulation will assist in the effective administration of the statutes by clarifying definitions, incorporating statutory language regarding elected officials and candidates for office, clarifying deadlines for information submission and criteria the agency will consider in determining independent contractor, leased employee, and volunteer status, clarifying employer exemptions from employer contributions, establishing employment relationships to which the administrative regulation will not apply, streamlining and revising language to comply with drafting requirements, and condensing materials incorporated by reference by eliminating five related forms.

(3) Does this administrative regulation or amendment implement legislation from the previous five years?(If yes, provide the year of the legislation and either the bill number or Kentucky Acts chapter number being implemented). Yes. KRS 61.592 - Amended 2024 Ky. Acts ch. 55, sec. 12, effective July 15, 2024; ch. 165, sec. 13, effective July 15, 2024; and ch. 214, sec. 1, effective July 15, 2024. -- Amended 2023 Ky. Acts ch. 71, sec. 2, effective January 1, 2024. -- Amended 2022 Ky. Acts ch. 56, sec. 1, effective July 14, 2022; and ch. 216, sec. 11, effective April 14, 2022. KRS 78.5540 - Amended 2024 Ky. Acts ch. 55, sec. 24, effective July 15, 2024; ch. 165, sec. 14, effective July 15, 2024; and ch. 214, sec. 2, effective July 15, 2024. -- Amended 2023 Ky. Acts ch. 71, sec. 3, effective January 1, 2024. -- Amended 2022 Ky. Acts ch. 56, sec. 2, effective July 14, 2022; and ch. 216, sec. 24, effective April 14, 2022.

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Of approximately 444,293 participants in the Kentucky Employees Retirement System, the State Police Retirement System, and the County Employees Retirement System, this administrative regulation affects only those who reemploy with a participating employer after they retire.

(5) Provide an analysis of how the entities identified in question (4) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (4) will have to take to comply with this administrative regulation or amendment:

The regulated community will be minimally impacted because the administrative regulation is already being implemented as written.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (4):

There will be no additional costs to comply with the amendment because it is already being implemented as written.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (4):

The regulated community will benefit from clarified definitions and deadlines for information submission and criteria the agency will consider in determining independent contractor, leased employee, and volunteer status, clarified employment relationships to which the administrative regulation will not apply, and fewer forms required for information submission.

(6) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no additional costs because the regulation is already being implemented as written.

(b) On a continuing basis:

There will be no additional costs because the regulation is already being implemented as written.

(7) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation or this amendment:

Administrative expenses of the Kentucky Public Pensions Authority are paid from the Retirement Allowance Account (trust and agency funds).

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No, an increase in fees or funding will not be necessary.

(9) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No, this administrative regulation does not establish any fees or directly or indirectly increase any fees.

(10) TIERING: Is tiering applied?

Yes, tiering is applied to the extent that retirement from hazardous and non-hazardous positions, and particularly law enforcement positions, may require different forms and procedures when reemploying with a participating employer as required by the governing statutes.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

KRS 61.505(1)(g), 61.590, 61.637(18), 78.5540(5).

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

KRS 61.637(18) and 78.5540(5).

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

The promulgating agency is the Kentucky Public Pensions Authority. There are no other affected state units, parts, or divisions.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:None.

For subsequent years:None.

2. Revenues:

For the first year:None.

For subsequent years:None.

3. Cost Savings:

For the first year:None.

For subsequent years:None.

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

There are no affected local entities.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

There are no additional regulated entities.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A (6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a):

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

This administrative regulation has minimal fiscal impact. It is being implemented as written.

(b) Methodology and resources used to reach this conclusion:

The agency analyzed costs and procedures for collecting information and determining whether reemployment of a retired member complies with statutory and regulatory requirements.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(14):

No, this administrative regulation will not have a major economic impact as defined by KRS 13A.010(14).

(b) The methodology and resources used to reach this conclusion:

The agency analyzed costs and procedures for collecting information and determining whether reemployment of a retired member complies with statutory and regulatory requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

26 U.S.C. 401(a), 26 C.F.R. 1.401-1, 1.401(a)-1

(2) State compliance standards.

KRS 61.637, 78.5540.

(3) Minimum or uniform standards contained in the federal mandate.

26 U.S.C. 401(a), and 26 C.F.R. 1.401-1 and 1.401(a)-1 establishes the requirements for pensions, profit-sharing, and stock bonus plans to qualify for certain tax-exempt benefits.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No, this administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than the federal mandate.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than the federal mandate.