

161.661 Disability retirement. (Effective January 1, 2022)

- (1) (a) Any member who is accredited by the Teachers' Retirement System for five (5) or more years of service in Kentucky after July 1, 1941, may retire for disability and be granted a disability allowance if found to be eligible as provided in this section. Application for disability benefits shall be made within one (1) year of the last contributing service in Kentucky, and the disability must have occurred during the most recent period of employment in a position covered by the Teachers' Retirement System and subsequent to the accreditation by the Teachers' Retirement System of five (5) years of retirement system service credit in Kentucky. A disability occurring during the regular vacation immediately following the last period of active service in Kentucky or during an official leave for which the member is entitled to make regular contributions to the retirement system, shall be considered as having occurred during a period of active service.
- (b) The annual disability allowance shall be equal to sixty percent (60%) of the member's final average salary.
- (c) The following individuals shall not be eligible for disability benefits under this section:
 1. Members with twenty-seven (27) or more years of service credit; and
 2. Individuals who become members on or after July 1, 2021, who are eligible for an unreduced benefit under KRS 161.600(1)(b)2. or (d).
- (2) The provisions of KRS 161.520, 161.525, and subsections (3), (4), and (5) of this section shall not apply to disability retirees whose benefits were calculated on the service retirement formula nor to survivors of these members.
- (3) Members shall earn one (1) year of entitlement to disability retirement, at sixty percent (60%) of the member's final average salary, for each four (4) years of service in a covered position, but any member meeting the service requirement for disability retirement shall be credited with no less than five (5) years of eligibility.
- (4) A member retired by reason of disability shall continue to earn service credit at the rate of one (1) year for each year retired for disability. This service shall be credited to the member's account at the expiration of entitlement as defined in subsection (3) of this section, or when the member's eligibility for disability benefits is terminated upon recommendation of a medical review committee, and this service shall be used in calculating benefits as provided in subsection (5) of this section, but under no circumstances shall this service be used to provide the member with more than twenty-seven (27) years of total service credit. The service credit shall be valued at the same level as service earned by active members as provided under KRS 161.600 or 161.620.
- (5) Any member retired by reason of disability and remaining disabled at the expiration of the entitlement period shall have his or her disability benefits recalculated using the service retirement formula with service credit earned as set out in subsection (4) of this section. The retirement allowance shall be calculated as set forth in KRS 161.620, except that those persons less than sixty (60) years of age shall be

considered as sixty (60) years of age. Members having their disability benefits recalculated under this subsection shall not be entitled to a benefit based upon an average of their three (3) highest salaries as set forth in KRS 161.220(9), unless approved otherwise by the board of trustees.

- (6) Members who have their disability retirement allowance recalculated at the expiration of the entitlement period shall continue to have coverage under the post-retirement medical insurance program. Restrictions on employment shall remain in effect until the member attains age seventy (70) or until the member's eligibility is discontinued. KRS 161.520 and 161.525 shall not apply to survivors of disability retirees whose retirement allowances have been recalculated at the expiration of the entitlement period. Members who have their disability retirement allowance recalculated at the expiration of their entitlement period shall be entitled to a minimum monthly allowance of five hundred dollars (\$500) as the basic straight life annuity. The minimum allowance shall be effective July 1, 1992, and shall apply to those members who have had their allowance recalculated prior to that date and to disability retirees who will have their benefit allowance recalculated on or after that date. For individuals who become members on or after July 1, 2021, disability retirement payments and any other recurring payments payable by any other state-administered retirement system shall be applied to reduce, on a dollar-for-dollar basis, the minimum monthly disability retirement allowance payable under this subsection.
- (7) Effective July 1, 1992, members retired for disability prior to July 1, 1964, shall be entitled to a minimum monthly allowance of five hundred dollars (\$500) as their basic straight life annuity and their surviving spouse shall be eligible for survivor benefits as provided in KRS 161.520(1)(a) and (b).
- (8) Any member retired by reason of disability may voluntarily waive disability benefits and return to teaching or any member, who is age sixty (60) years or older, may elect to waive disability benefits and retire for service on the basis of service credited to the member on the effective date of the disability retirement.
- (9) In order to qualify for retirement by reason of disability a member must suffer from a physical or mental condition presumed to be permanent in duration and of a nature as to render the member incapable of being gainfully employed in a covered position. The incapability must be revealed by a competent examination by a licensed physician or physicians and must be approved by a majority of a medical review committee.
- (10) A member retired by reason of disability shall be required to undergo periodic examinations at the discretion of the board of trustees to determine whether the disability allowance shall be continued. When examination and recommendation of a medical review committee indicate the disability no longer exists, the allowance shall be discontinued.
- (11) Eligibility for payment shall begin on the first day of the month following receipt of the application in the Teachers' Retirement System office, or the first of the month next following the last payment of salary or sick leave benefits by the employer, whichever is the later date.

- (12) No person who receives a disability allowance may be employed in a position that entails duties or qualification requirements similar to positions subject to participation in the retirement system either within or without the State of Kentucky. So doing shall constitute a misdemeanor and shall result in loss of the allowance from the first date of this service. For purposes of this subsection and subsection (13) of this section, "employment" and "occupation," and derivatives thereof, mean any activity engaged in by the member receiving disability allowance from which income is earned. A member who applies for and is approved for disability retirement on or after July 1, 2002, and whose annual disability benefit is less than forty thousand dollars (\$40,000) may earn income in any occupation other than covered employment only to the extent that the annual income from the other employment when added to the annual disability benefit does not exceed forty thousand dollars (\$40,000). For any member who exceeds this limit as a result of income from other employment, the Kentucky Teachers' Retirement System shall reduce the member's disability benefit on a dollar-for-dollar basis for each dollar that the member's combined annual disability benefit and annual income from other employment exceeds forty thousand dollars (\$40,000). The board of trustees may annually increase the forty thousand dollar (\$40,000) limit by the percentage increase in the annual average of the consumer price index for all urban consumers for the most recent calendar year as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%). The retirement system may require income verification from the member, including but not limited to copies of tax returns and federal forms W-2 and W-4P.
- (13) All members who applied for disability retirement before July 1, 2002, and were approved as a result of that application shall be subject to the income limitations as they existed on June 30, 2002, until July 1, 2006. Effective July 1, 2006, the twenty-seven thousand dollar (\$27,000) limitation shall be increased to forty thousand dollars (\$40,000) and may be adjusted by the board of trustees by the consumer price index in the manner described in subsection (12) of this section. The recipient of a disability allowance who engages in any gainful occupation other than covered employment must make a report of the duties involved, compensation received, and any other pertinent information required by the board of trustees. The retirement system may require income verification from the member, including but not limited to copies of tax returns and federal forms W-2 and W-4P.
- (14) The board of trustees shall designate medical review committees, each consisting of three (3) licensed physicians. A medical review committee shall pass upon all applications for disability retirement and upon all applicant statements, medical certifications, and examinations submitted in connection with disability applications. The disposition of each case shall be recommended by a medical review committee in writing to the retirement system. Members of a medical review committee shall follow administrative regulations regarding procedures as the board of trustees may enact and shall be paid reasonable fees and expenses as authorized by the board of trustees in compliance with the provisions of KRS 161.330 and 161.340. The retirement system may secure additional medical examinations and information as it deems necessary. A member may appeal any final agency decision

denying his or her disability retirement application pursuant to the provisions of KRS 161.250(2).

- (15) A disability may be presumed to be permanent if the condition creating the disability may be reasonably expected to continue for one (1) year or more from the date of application for disability benefits.
- (16) Any member who has voluntarily waived disability benefits or whose disability benefits have been discontinued on recommendation of a medical review committee, may apply for reinstatement of disability benefits. The application for reinstatement must be made to the retirement system within twelve (12) months of the date disability benefits terminated. If the termination of benefits were voluntary, the reinstatement may be made without medical examination if application is made within three (3) months of the termination date. Other applications for reinstatement will be processed in the same manner as new applications for benefits.
- (17) No person who is receiving disability benefits under this section may be employed in a position which qualifies the person for membership in a retirement system financed wholly or in part with public funds. Employment in a position prohibited by this subsection shall result in disqualification for those disability benefits from the date of employment in the prohibited position.
- (18) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section, or becomes disqualified from receiving a portion of those benefits due to income from other than covered employment, shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits. The Teachers' Retirement System may, in order to collect an outstanding debt, reduce or terminate any benefit that a member is otherwise entitled to receive.
- (19) Notwithstanding any other provision of this section to the contrary, individuals who become members on or after January 1, 2022, shall be eligible for an actuarially determined disability benefit as prescribed by the board of trustees via administrative regulations promulgated by the board. The board of trustees shall arrange by appropriate contract or on a self-insured basis a disability plan to provide the disability benefits and may adjust the benefits in accordance with KRS 161.633(3) or 161.634(3).

Effective: January 1, 2022

History: Repealed, reenacted, and amended 2021 Ky. Acts ch. 157, sec. 37, effective January 1, 2022; and amended ch. 192, sec. 24, effective June 29, 2021. -- Amended 2018 Ky. Acts ch. 107, sec. 77, effective July 14, 2018. -- Amended 2006 Ky. Acts ch. 189, sec. 3, effective July 1, 2006. -- Amended 2002 Ky. Acts ch. 275, sec. 31, effective July 1, 2002. -- Amended 1996 Ky. Acts ch. 359, sec. 17, effective July 1, 1996. -- Amended 1994 Ky. Acts ch. 369, sec. 21, effective July 1, 1994. -- Amended

1992 Ky. Acts ch. 192, sec. 15, effective July 1, 1992. -- Amended 1990 Ky. Acts ch. 442, sec. 17, effective July 1, 1990; and ch. 476, Pt. V, sec. 536, effective July 13, 1990. -- Amended 1986 Ky. Acts ch. 440, sec. 13, effective July 1, 1986. -- Amended 1980 Ky. Acts ch. 206, sec. 12, effective July 1, 1980. -- Amended 1978 Ky. Acts ch. 152, sec. 17, effective March 28, 1978. -- Amended 1976 Ky. Acts ch. 351, sec. 21, effective July 1, 1976. -- Amended 1974 Ky. Acts ch. 395, sec. 17. -- Amended 1972 Ky. Acts ch. 82, sec. 23. -- Amended 1968 Ky. Acts ch. 136, sec. 13. -- Amended 1966 Ky. Acts ch. 16, sec. 7. -- Created 1964 Ky. Acts ch. 43, sec. 18.

Legislative Research Commission Note (1/1/2022). This statute was amended by 2021 Ky. Acts chs. 157 and 192, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (12/13/2018). On December 13, 2018, the Kentucky Supreme Court ruled that the passage of 2018 SB 151 (2018 Ky. Acts ch. 107), did not comply with the three-readings rule of Kentucky Constitution Section 46 and that the legislation is, therefore, constitutionally invalid and declared void. That ruling applies to changes made to this statute in that Act.