

1 AN ACT relating to changes in pension payments due to overtime worked during a
2 local emergency and declaring an emergency.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 61.598 is amended to read as follows:

- 5 (1) For purposes of this section, "bona fide promotion or career advancement":
- 6 (a) Means a professional advancement in substantially the same line of work held
7 by the employee in the four (4) years immediately prior to the final five (5)
8 fiscal years preceding retirement or a change in employment position based on
9 the training, skills, education, or expertise of the employee that imposes a
10 significant change in job duties and responsibilities to clearly justify the
11 increased compensation to the member; and
- 12 (b) Does not include any circumstance where an elected official participating in
13 the Kentucky Employees Retirement System or the County Employees
14 Retirement System takes a position of employment with a different employer
15 participating in any of the state-administered retirement systems.
- 16 (2) (a) For employees retiring from the Kentucky Employees Retirement System, the
17 County Employees Retirement System, or the State Police Retirement System
18 on or after January 1, 2018, the systems shall, for each of the retiring
19 employee's last five (5) fiscal years of employment, identify any fiscal year in
20 which the creditable compensation increased at a rate of ten percent (10%) or
21 more annually over the immediately preceding fiscal year's creditable
22 compensation. The employee's creditable compensation in the fiscal year
23 immediately prior to the employee's last five (5) fiscal years of employment
24 shall be utilized to compare the initial fiscal year in the five (5) fiscal year
25 period.
- 26 (b) Except as limited or excluded by subsections (3) and (4) of this section, any
27 amount of increase in creditable compensation for a fiscal year identified

1 under paragraph (a) of this subsection that exceeds ten percent (10%) more
2 than the employee's creditable compensation from the immediately preceding
3 fiscal year shall not be included in the creditable compensation used to
4 calculate the retiring employee's monthly retirement allowance. If the
5 creditable compensation for a specific fiscal year identified under paragraph
6 (a) of this subsection as exceeding the ten percent (10%) increase limitation is
7 not used to calculate the retiring employee's monthly retirement allowance,
8 then no reduction in creditable compensation shall occur for that fiscal year.

9 (c) If the creditable compensation of the retiring employee is reduced as provided
10 by paragraph (b) of this subsection, the retirement systems:

- 11 1. Shall refund the employee contributions and interest attributable to the
12 reduction in creditable compensation; and
- 13 2. Shall not refund the employer contributions paid but shall utilize those
14 funds to pay down the unfunded liability of the pension fund in which
15 the retiring employee participated.

16 (3) (a) In order to ensure the prospective application of the limitations on increases in
17 creditable compensation contained in subsection (2) of this section, only the
18 creditable compensation earned by the retiring employee on or after July 1,
19 2017, shall be subject to reduction under subsection (2) of this section.
20 Creditable compensation earned by the retiring employee prior to July 1,
21 2017, shall not be subject to reduction under subsection (2) of this section.

22 (b) If the reductions in creditable compensation during a retiring member's entire
23 last five (5) years of employment results in a reduction in his or her monthly
24 retirement allowance of less than twenty-five dollars (\$25) per month or an
25 actuarially equivalent value under the various payment options, then no
26 reduction in creditable compensation or retirement allowances shall occur
27 under subsection (2) of this section.

- 1 (4) Subsection (2) of this section shall not apply to:
- 2 (a) A bona fide promotion or career advancement as defined by subsection (1) of
- 3 this section;
- 4 (b) A lump-sum payment for compensatory time paid to an employee upon
- 5 termination of employment;
- 6 (c) A lump-sum payment made pursuant to an alternate sick leave program under
- 7 KRS 78.616(5) that is paid to an employee upon termination of employment;
- 8 (d) Increases in creditable compensation in a fiscal year over the immediately
- 9 preceding fiscal year, where in the immediately preceding fiscal year the
- 10 employer reported the employee as being on leave without pay for any reason,
- 11 including but not limited to sick leave without pay, maternity leave, leave
- 12 authorized under the Family Medical Leave Act, and any period of time where
- 13 the employee received workers' compensation benefit payments that were not
- 14 reported to the plan as creditable compensation;
- 15 (e) Increases in creditable compensation directly attributable to an employee's
- 16 receipt of compensation for:
- 17 1. Overtime hours worked while serving as a participating employee under
- 18 any state or federal grant, grant pass-through, or similar program that
- 19 requires overtime as a condition or necessity of the employer's receipt of
- 20 the grant; or
- 21 2. *The first one hundred (100) hours of mandatory overtime hours that*
- 22 *the employee is individually required to work by the employer during a*
- 23 *fiscal year. This subparagraph shall not be construed to apply to*
- 24 *overtime hours voluntarily worked by the employee or in situations in*
- 25 *which the employee has the option to elect out of participation in*
- 26 *overtime hours. Any mandatory overtime hours exempt under this*
- 27 *subparagraph shall be in addition to any overtime hours otherwise*

1 **exempt under the provisions of this subsection;** and

2 (f) Increases in creditable compensation directly attributable to an employee's
3 receipt of compensation for overtime performed during **and as a result of** a
4 state of emergency declared by:

5 **1.** The President of the United States or the Governor of the
6 Commonwealth of Kentucky; **or**

7 **2.** **A local government in which the Governor authorizes mobilization of**
8 **the Kentucky National Guard pursuant to KRS 38.030 and 39A.950**
9 **during such time as the National Guard is mobilized.**

10 (5) (a) For employees retiring on or after January 1, 2014, but prior to July 1, 2017,
11 the last participating employer shall be required to pay for any additional
12 actuarial costs resulting from annual increases in an employee's creditable
13 compensation greater than ten percent (10%) over the employee's last five (5)
14 fiscal years of employment that are not the direct result of a bona fide
15 promotion or career advancement. The cost shall be determined by the
16 retirement systems.

17 (b) Lump-sum payments for compensatory time paid to an employee upon
18 termination of employment shall be exempt from this subsection.

19 (c) The Authority shall be required to answer inquiries from participating
20 employers regarding this subsection. Upon request of the employer prior to the
21 employee's change of position or hiring, the systems shall make a
22 determination that is binding to the systems as to whether or not a change of
23 position or hiring constitutes a bona fide promotion or career advancement.

24 (d) For any additional actuarial costs charged to the employer under this
25 subsection, the systems shall allow the employer to pay the costs without
26 interest over a period of one (1) year from the date of receipt of the employer's
27 final invoice.

- 1 (6) The Authority shall determine whether increases in creditable compensation during
2 the last five (5) fiscal years of employment prior to retirement constitute a bona fide
3 promotion or career advancement and may promulgate administrative regulations in
4 accordance with KRS Chapter 13A to administer this section. All state-administered
5 retirement systems shall cooperate to implement this section.
- 6 (7) Any employer who disagrees with a determination made by the system in
7 accordance with this section regarding whether an increase in compensation
8 constitutes a bona fide promotion or career advancement for purposes of subsection
9 (5) of this section may request a hearing and appeal the decision in accordance with
10 KRS 61.645(16) or 78.782(16).
- 11 (8) For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky
12 Retirement Systems and the County Employees Retirement System shall provide a
13 means for employers to separately report the specific exceptions provided in
14 subsection (4) of this section within the reporting system utilized by the employers
15 for making employer reports under KRS 16.645, 61.675, and 78.545. The Kentucky
16 Retirement Systems and the County Employees Retirement System shall continually
17 provide communication, instructions, training, and educational opportunities for
18 employers regarding how to appropriately report exemptions established by
19 subsection (4) of this section.
- 20 (9) This section shall not apply to employees participating in the hybrid cash balance
21 plan as provided by KRS 16.583, 61.597, 78.5512, and 78.5516.
- 22 ➔Section 2. The amendments to subsection (4)(f) of Section 1 of this Act shall be
23 retroactive to May 28, 2020, and shall for purposes of local government emergencies
24 issued on or after May 28, 2020, but prior to October 5, 2020, apply to any overtime
25 worked from May 28, 2020, through May 11, 2021, regardless of whether or not the
26 National Guard was mobilized for the entire period. The Kentucky Public Pensions
27 Authority shall adjust the benefits of members, retirees, and recipients accordingly.

1 ➔Section 3. Whereas the retirement benefits of public safety officers have been
2 impacted due to overtime worked during emergencies declared by local governments, an
3 emergency is declared to exist, and this Act takes effect upon its passage and approval by
4 the Governor or upon its otherwise becoming a law.