

1 AN ACT relating to pension spiking in the Kentucky Public Pensions Authority.

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

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

4 (1) For purposes of this section, "bona fide promotion or career advancement":

5 (a) Means:

6 **1.** 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
8 (5) fiscal years preceding retirement or a change in employment position
9 based on the training, skills, education, or expertise of the employee that
10 imposes a significant change in job duties and responsibilities to clearly
11 justify the increased compensation to the member; **or**

12 **2. An increase in creditable compensation for all employees in a**
13 **specified class due to an increase in rate of pay authorized or funded**
14 **by the legislative or administrative body of the employer or due to an**
15 **increase in rate of pay mandated in a collective bargaining agreement**
16 **approved by the legislative body of the employer;** and

17 (b) Does not include any circumstance where an elected official participating in
18 the Kentucky Employees Retirement System or the County Employees
19 Retirement System takes a position of employment with a different employer
20 participating in any of the state-administered retirement systems.

21 (2) (a) For employees retiring from the Kentucky Employees Retirement System, the
22 County Employees Retirement System, or the State Police Retirement System
23 on or after January 1, 2018, the systems shall, for each of the retiring
24 employee's last five (5) fiscal years of employment, identify any fiscal year in
25 which the creditable compensation increased at a rate of ten percent (10%) or
26 more annually over the immediately preceding fiscal year's creditable
27 compensation. The employee's creditable compensation in the fiscal year

1 immediately prior to the employee's last five (5) fiscal years of employment
2 shall be utilized to compare the initial fiscal year in the five (5) fiscal year
3 period.

4 (b) Except as limited or excluded by subsections (3) and (4) of this section, any
5 amount of increase in creditable compensation for a fiscal year identified
6 under paragraph (a) of this subsection that exceeds ten percent (10%) more
7 than the employee's creditable compensation from the immediately preceding
8 fiscal year shall not be included in the creditable compensation used to
9 calculate the retiring employee's monthly retirement allowance. If the
10 creditable compensation for a specific fiscal year identified under paragraph
11 (a) of this subsection as exceeding the ten percent (10%) increase limitation is
12 not used to calculate the retiring employee's monthly retirement allowance,
13 then no reduction in creditable compensation shall occur for that fiscal year.

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

- 16 1. Shall refund the employee contributions and interest attributable to the
17 reduction in creditable compensation; and
- 18 2. Shall not refund the employer contributions paid but shall utilize those
19 funds to pay down the unfunded liability of the pension fund in which
20 the retiring employee participated.

21 (3) (a) In order to ensure the prospective application of the limitations on increases in
22 creditable compensation contained in subsection (2) of this section, only the
23 creditable compensation earned by the retiring employee on or after July 1,
24 2017, shall be subject to reduction under subsection (2) of this section.
25 Creditable compensation earned by the retiring employee prior to July 1,
26 2017, shall not be subject to reduction under subsection (2) of this section.

27 (b) If the reductions in creditable compensation during a retiring member's entire

1 last five (5) years of employment results in a reduction in his or her monthly
2 retirement allowance of less than twenty-five dollars (\$25) per month or an
3 actuarially equivalent value under the various payment options, then no
4 reduction in creditable compensation or retirement allowances shall occur
5 under subsection (2) of this section.

6 (4) Subsection (2) of this section shall not apply to:

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

1 fiscal year. This subparagraph shall not be construed to apply to
2 overtime hours voluntarily worked by the employee or in situations in
3 which the employee has the option to elect out of participation in
4 overtime hours. Any mandatory overtime hours exempt under this
5 subparagraph shall be in addition to any overtime hours otherwise
6 exempt under the provisions of this subsection; and

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

- 10 1. The President of the United States or the Governor of the
11 Commonwealth of Kentucky; or
- 12 2. A local government in which the Governor authorizes mobilization of
13 the Kentucky National Guard pursuant to KRS 38.030 and 39A.950
14 during such time as the National Guard is mobilized.

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

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

24 (c) The Authority shall be required to answer inquiries from participating
25 employers regarding this subsection. Upon request of the employer prior to
26 the employee's change of position or hiring, the systems shall make a
27 determination that is binding to the systems as to whether or not a change of

- 1 position or hiring constitutes a bona fide promotion or career advancement.
- 2 (d) For any additional actuarial costs charged to the employer under this
3 subsection, the systems shall allow the employer to pay the costs without
4 interest over a period of one (1) year from the date of receipt of the employer's
5 final invoice.
- 6 (6) The Authority shall determine whether increases in creditable compensation during
7 the last five (5) fiscal years of employment prior to retirement constitute a bona fide
8 promotion or career advancement and may promulgate administrative regulations in
9 accordance with KRS Chapter 13A to administer this section. All state-
10 administered retirement systems shall cooperate to implement this section.
- 11 (7) Any employer who disagrees with a determination made by the system in
12 accordance with this section regarding whether an increase in compensation
13 constitutes a bona fide promotion or career advancement for purposes of subsection
14 (5) of this section may request a hearing and appeal the decision in accordance with
15 KRS 61.645(16) or 78.782(16).
- 16 (8) For the fiscal year beginning July 1, 2017, and subsequent years, the Kentucky
17 Retirement Systems and the County Employees Retirement System shall provide a
18 means for employers to separately report the specific exceptions provided in
19 subsection (4) of this section within the reporting system utilized by the employers
20 for making employer reports under KRS 16.645, 61.675, and 78.545. The Kentucky
21 Retirement Systems and the County Employees Retirement System shall
22 continually provide communication, instructions, training, and educational
23 opportunities for employers regarding how to appropriately report exemptions
24 established by subsection (4) of this section.
- 25 (9) This section shall not apply to employees participating in the hybrid cash balance
26 plan as provided by KRS 16.583, 61.597, 78.5512, and 78.5516.