

FINANCE AND ADMINISTRATION CABINET

Kentucky Public Pensions Authority

County Employees Retirement System

(Amended at ARRS Committee)

105 KAR 1:120. Participation of County Employees Retirement System employers.

RELATES TO: KRS 78.510 – 78.990, 26 U.S.C. 414(d), 29 U.S.C. 1002(32)

STATUTORY AUTHORITY: KRS 78.510(3), 78.782

NECESSITY, FUNCTION, AND CONFORMITY: KRS 78.510(3) authorizes the Board of Trustees of the County Employees Retirement System to determine the eligibility of a prospective employer to participate in the County Employees Retirement System (CERS). KRS 78.782 authorizes the Board of Trustees of the County Employees Retirement System to promulgate administrative regulations not inconsistent with the provisions of KRS 78.510 through 78.852 that are necessary or proper to carry out the provisions of KRS 78.510 through 78.852. This administrative regulation establishes the procedures and requirements for employer participation in CERS.

Section 1. Definitions.

- (1) "Board" is defined by KRS 78.510(2).
- (2) "Inactive employer" means a participating employer that ceases to have any employees in a regular full-time position participating in the system.
- (3) "Merged employer" means one (1) or more participating employers that have merged with one (1) or more participating or non-participating employers into a new single entity or operating under the name of one (1) of the participating or non-participating employers that are part of the merger.
- (4) "New or separate employer" means a participating employer that:
 - (a) Forms, becomes, or is bought out by a non-participating employer; or
 - (b) Dissolves or becomes an inactive employer, and another distinct entity is formed and assumes responsibility for a portion or all of the business.
- (5) "Non-participating employer" means an entity that:
 - (a) Does not participate in the system; or
 - (b) Applied for participation in the system and:
 1. Is pending a determination of participation;
 2. Withdrew its application; or
 3. Was denied or failed to complete the requirements to be approved for participation.
- (6) "Split or separated employer" means a participating employer that divides into two (2) or more distinct entities.
- (7) "System" is defined by KRS 78.510(1).

Section 2. Participation in the System. For a prospective employer to participate in the system, the prospective employer shall:

- (1) Meet the definition of county in KRS 78.510(3);
- (2) Be qualified to establish and maintain a governmental plan as defined in 26 U.S.C. 414(d) and 29 U.S.C. 1002(32);
- (3) Have an irrevocable contract with the Kentucky Personnel Cabinet for health insurance coverage for its employees in accordance with KRS 78.530(1)(b);
- (4) Comply with:
 - (a) KRS 78.510 through 78.852; and
 - (b) KAR Title 105;

- (5) Complete the requirements of Sections 3 through 5 of this administrative regulation; and
- (6) Receive board approval in accordance with Section 6 of this administrative regulation.

Section 3. Determining Prospective Employer's Qualification to Participate.

- (1) A prospective employer shall submit a resolution or ordinance by its controlling board authorizing participation in the system as established in KRS 78.530(1) within twelve (12) months of the date the resolution or ordinance was passed.
- (2) No later than the end-of-day ninety (90) calendar days from the date the resolution or ordinance indicated in subsection (1) of this section is submitted, the prospective employer shall submit:
 - (a) Its Articles of Incorporation, bylaws, ordinance, or other document establishing or creating the prospective employer;
 - (b) Its current fiscal year budget;
 - (c) Its health insurance contract as described in Section 2(3) of this administrative regulation;
 - (d) A valid Form 2010, Election or Rejection of Participation, completed by all current employees;
 - (e) A valid Form 7075, Employer Contact Information;
 - (f) A valid Form 7250, Verification of Payments Outside Regular Wages;
 - (g) A valid Form 7280, Employer Certification for Installment Purchase of Service;
 - (h) A valid Form 7851, Data Use and Reporting Agreement;
 - (i) A valid Form 7071, Employer Self Service Employer Administrator Account Creation Request; and
 - (j) If requested by the agency, a letter from the U.S. Internal Revenue Service or U.S. Department of Labor that states the entity sufficiently meets the governmental requirements to participate in a qualified governmental retirement plan.
- (3)
 - (a) Once the requirements of subsections (1) and (2) of this section are received by the agency, the agency shall review the documentation and determine if the prospective employer meets the requirements for participation in the system.
 - (b) If a prospective employer meets the requirements for participation in the system, the agency shall initiate a trial period of participation for the prospective employer in accordance with Section 4 of this administrative regulation.

Section 4. Trial Period.

- (1) The prospective employer shall serve a three (3) month trial period, which shall begin on the first day of the month following the completion to the requirements as established in Sections 2 and 3 of this administrative regulation.
- (2) During the trial period, the prospective employer shall:
 - (a) Submit all reports required by KRS 78.625 in accordance with 105 KAR 1:140;
 - (b) Remit applicable employer, employee, and health insurance contributions in accordance with 105 KAR 1:140; and
 - (c) Require employee participation in accordance with KRS 78.530, 78.531, 78.535, and 78.540.

Section 5. Submission to the Board. Once the requirements of Sections 2 and 4 of this administrative regulation are complete, the agency shall provide the board with the prospective employer's:

- (1) Trial period results;
- (2) Current fiscal year's budget; and
- (3) Resolution or ordinance authorizing participation in the system.

Section 6. Board Review.

- (1) The prospective employer shall obtain authorization to participate from the board as established in KRS 78.510(3).
- (2) The board may deny participation if it determines that a prospective employer has failed to comply with the provisions of Sections 2 through 4 of this administrative regulation, or if the prospective employer's participation will have:
 - (a) An adverse impact on the tax qualification of the system, pursuant to 26 U.S.C. 414(d) or any other applicable federal law or regulation; or
 - (b) A significant adverse impact on the actuarial soundness of the system.
- (3)
 - (a) If the board denies a prospective employer's request to participate in the system, it shall refund to the prospective employer and its employees the contributions paid by them to the system during the prospective employer's trial period.
 - (b) If the board approves the prospective employer's request to participate in the system, the effective date of participation shall be the first day of the trial period as established in Section 4 of this administrative regulation.

Section 7. Alternate Participation Plan.

- (1) If a prospective employer wishes to participate under the alternate participation plan pursuant to KRS 78.530(3), it shall request the board to conduct an actuarial study to determine the cost of purchasing past service for eligible employees prior to adoption of a resolution or ordinance by its controlling board authorizing participation in the system.
- (2) The annual installment to amortize the cost of the employees' service under the alternate participation plan shall not be less than ten (10) percent of the total annual payroll for nonhazardous employees and fifteen (15) percent of the total annual payroll for hazardous employees included in the alternate participation plan. The payment shall be due each year on the first day of the month in which participation began.

Section 8. Continued Participation. Pursuant to KRS 78.530(2), once an employer begins participating in the system, the employer shall continue to participate if it remains qualified unless:

- (1) The board requires the employer to involuntarily cease participation in accordance with KRS 78.535(2)(b); or
- (2) A voluntary cessation is allowed pursuant to KRS 78.535(2)(a).

Section 9. Split, Separated, or New Entity.

- (1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of splitting, separating, or becoming a new entity, a participating employer shall submit a written notification of its intended split, separation, or formation of a new entity. The written notification shall be submitted on the participating employer's official letterhead.
- (2) Once the agency is notified of the split, separation, or formation of a new entity, or becomes aware through any means, the agency shall determine whether:
 - (a) A new or separate employer has been created; or
 - (b) Split or separated employers have been created.
- (3)
 - (a) A split, separated, or new employer shall participate in the system if, by the end of day fifteen (15) calendar days from the date of the split, separation, or formation of a new entity, all the requirements established in Section 3(2) of this administrative regulation are submitted.
 - (b) The participation date shall be:
 1. The first day of the month following the date all the required documentation was received, if received by the 15th day of the month; or

2. The first day of the month following the month after the date all the required documentation was received, if received after the 15th day of the month.

(c) The split, separated, or new employer shall comply with KRS 78.510 through 78.852 and KAR Title 105 as of the participation date.

(d) If the split, separated, or new employer fails to complete the requirements of paragraph (a) of this subsection, then the split, separated, or new employer shall only participate if it takes all steps to participate in the system in accordance with KRS 78.530 and this administrative regulation.

(4) If there is a lapse in participation between the date the employer split, separated, or became a new entity and when it began participating, an employee who worked during the lapsed time may purchase service credit for that time by paying a delayed contribution payment if he or she elected to participate on a valid Form 2010, Election or Rejection of Participation, at the time the split, separated, or new entity began participating. The service shall not be included:

(a) In the member's total service for purposes of determining benefits under KRS 78.5536; or

(b) Toward retirement eligibility for members with a participation date on or after August 1, 2004, in accordance with KRS 61.552(10)(c), and 78.545.

Section 10. Merged Employer.

(1) Prior to beginning the formal process and not less than six (6) months prior to the effective date of merging, a participating employer shall submit a written notification of its intended merger. The written notification shall be submitted on the participating employer's official letterhead.

(2) Once the agency is notified of the merger, or becomes aware by other means, 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.

(3) Once the merger is complete, the merged employer shall comply with KRS 78.510 through 78.852 and KAR Title 105.

Section 11. Inactive Employers.

(1)

(a)

1. If an employer becomes an inactive employer, the employer shall submit a written notification on its official letterhead stating that the employer is an inactive employer.

2. Each year by the end of day on the last day of the month of the fiscal year, an inactive employer shall submit a written notification on its official letterhead stating that it remains an inactive employer, or stating that the employer is no longer an inactive employer as applicable.

(b) If an employer ceases to become an inactive employer, the employer shall:

1. Submit a written notification on its official letterhead stating that the employer is no longer an inactive employer by the end of day thirty (30) calendar days from having a participating employee; and

2. Begin reporting a participating employee the month after he or she becomes a participating employee.

(c) The agency shall determine whether or not a participating employer is an inactive employer.

(2) Employers shall comply with KRS 78.510 through 78.852 and KAR Title 105, regardless of the employer's status as an inactive employer.

(3) The agency shall periodically audit inactive employers to determine if they remain inactive employers.

Section 12. Incorporation by Reference.

(1) The following forms are incorporated by reference:

- (a) Form 2010, "Election or Rejection of Participation", March 2024;
- (b) Form 7071, "Employer Self Service Employer Administrator Account Creation Request", March 2024;
- (c) Form 7075, "Employer Contact Information", March 2024;
- (d) Form 7250, "Verification of Payments Outside Regular Wages", March 2024;
- (e) Form 7280, "Employer Certification for Installment Purchase of Service", March 2024; and
- (f) Form 7851, "Data Use and Reporting Agreement", January 2024.

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(18 Ky.R. 920; 1320; eff. 11-8-1991; 19 Ky.R. 2087; 2399; eff. 5-10-1993; 21 Ky.R. 1516; eff. 2-8-1995; 29 Ky.R. 757; 1244; eff. 11-12-2002; TAm eff. 3-4-2019; Cert eff. 3-5-2019; 50 Ky.R. 2262; 51 Ky.R. 249; eff. 11-5-2024.)

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