

2020 Kansas Statutes

74-4914. Normal retirement date; service after retirement; early retirement; employment after retirement, limitations, requirements, waiver of penalties and third-party entities; members as a result of a merger or consolidation.

(1) The normal retirement date for a member of the system shall be the first day of the month coinciding with or following termination of employment with any participating employer not followed by employment with any participating employer within 60 days, or 180 days as provided in subsection (10), and without any prearranged agreement for employment with any participating employer, and the attainment of age 65 or, commencing July 1, 1993, age 62 with the completion of 10 years of credited service or the first day of the month coinciding with or following the date that the total of the number of years of credited service and the number of years of attained age of the member is equal to or more than 85. In no event shall a normal retirement date for a member be before six months after the entry date of the participating employer by whom such member is employed. A member may retire on the normal retirement date or on the first day of any month thereafter upon the filing with the office of the retirement system of an application in such form and manner as the board shall prescribe. Such application shall contain a certification by the member that the member will not be employed with any participating employer within 60 days, or 180 days as provided in subsection (10), of retirement and the member has not entered into a prearranged agreement for employment with any participating employer. Nothing herein shall prevent any person, member or retirant from being employed, appointed or elected as an employee, appointee, officer or member of the legislature. Elected officers may retire from the system on any date on or after the attainment of the normal retirement date, but no retirement benefits payable under this act shall be paid until the member has terminated such member's office.

(2) No retirant shall make contributions to the system or receive service credit for any service after the date of retirement.

(3) Any member who is an employee of an affiliating employer pursuant to K.S.A. 74-4954b, and amendments thereto, and has not withdrawn such member's accumulated contributions from the Kansas police and firemen's retirement system may retire before such member's normal retirement date on the first day of any month coinciding with or following the attainment of age 55.

(4) Any member may retire before such member's normal retirement date on the first day of any month coinciding with or following termination of employment with any participating employer not followed by employment with any participating employer within 60 days, or 180 days as provided in subsection (10), and the attainment of age 55 with the completion of 10 years of credited service, but in no event before six months after the entry date, upon the filing with the office of the retirement system of an application for retirement in such form and manner as the board shall prescribe. The member's application for retirement shall contain a certification by the member that the member will not be employed with any participating employer within 60 days, or 180 days as provided in subsection (10), of retirement and the member has not entered into a prearranged agreement for employment with any participating employer.

(5) Except as provided in subsections (7) and (10), on or after July 1, 2006, through December 31, 2017, for any retirant who is first employed or appointed in or to any position or office by a participating employer other than a participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation, and, on or after April 1, 2009, for any retirant who is employed by a third-party entity who contracts services with a participating employer other than a participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation to fill a position covered under K.S.A. 72-2215(a), and amendments thereto, with such retirant, such participating employer shall pay to the system the actuarially determined employer contribution and the statutorily prescribed employee contribution based on the retirant's compensation during any such period of employment or appointment. If a retirant is employed or appointed in or to any position or office for which

compensation for service is paid in an amount equal to \$25,000 or more in any one calendar year between July 1, 2016, and January 1, 2018, by any participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation, and, on or after April 1, 2009, by any third-party entity who contracts services to fill a position covered under K.S.A. 72-2215(a), and amendments thereto, with such retirant with a participating employer for which such retirant was employed or appointed during the final two years of such retirant's participation, such retirant shall not receive any retirement benefit for any month for which such retirant serves in such position or office. The participating employer who employs such retirant whether by contract directly with the retirant or through an arrangement with a third-party entity shall report to the system within 30 days of when the compensation paid to the retirant is equal to or exceeds any limitation provided by this section. Any participating employer who contracts services with any such third-party entity to fill a position covered under K.S.A. 72-2215(a), and amendments thereto, shall include in such contract a provision or condition which requires the third-party entity to provide the participating employer with the necessary compensation paid information related to any such position filled by the third-party entity with a retirant to enable the participating employer to comply with provisions of this subsection relating to the payment of contributions and reporting requirements. The provisions and requirements provided for in amendments made in this act which relate to positions filled with a retirant or employment of a retirant by a third-party entity shall not apply to any contract for services entered into prior to April 1, 2009, between a participating employer and third-party entity as described in this subsection. Any retirant employed by a participating employer or a third-party entity as provided in this subsection shall not make contributions nor receive additional credit under such system for such service except as provided by this section. Upon request of the executive director of the system, the secretary of revenue shall provide such information as may be needed by the executive director to carry out the provisions of this act. The provisions of this subsection shall not apply to retirants employed as substitute teachers without a contract or officers, employees or appointees of the legislature. The provisions of this subsection shall not apply to members of the legislature. The provisions of this subsection shall not apply to any other elected officials. Commencing July 1, 2005, the provisions of this subsection shall not apply to retirants who either retired under the provisions of subsection (1), or, if they retired under the provisions of subsection (4), were retired more than 30 days prior to the effective date of this act and are licensed professional nurses or licensed practical nurses employed by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or K.S.A. 38-2302(k), and amendments thereto, the Kansas soldiers' home or the Kansas veterans' home. Nothing in this subsection shall be construed to create any right, or to authorize the creation of any right, which is not subject to amendment or nullification by act of the legislature. The participating employer of such retirant shall pay to the system the actuarially determined employer contribution based on the retirant's compensation during any such period of employment. The provisions of the subsection shall expire on January 1, 2018.

(6) For purposes of this section, any employee of a local governmental unit which has its own pension plan who becomes an employee of a participating employer as a result of a merger or consolidation of services provided by local governmental units, which occurred on January 1, 1994, may count service with such local governmental unit in determining whether such employee has met the years of credited service requirements contained in this section.

(7) (a) (i) Except as provided in K.S.A. 74-4937(3), (4), or (5), and amendments thereto, and the provisions of this subsection, commencing July 1, 2016, and ending January 1, 2018, any retirant who is employed or appointed in or to any position by a participating employer, an independent contractor or a third-party entity who contracts services with a participating employer to fill a position, without any prearranged agreement with such participating employer and not prior to 60 days after such retirant's retirement date, shall not receive any retirement benefit for any month in any calendar year in which the retirant receives compensation in an amount equal to \$25,000 or more, pursuant to this subsection. Any participating employer who hires a retirant covered by this subsection shall pay to the system the statutorily

prescribed employer contribution rate for such retirant, without regard to whether the retirant is receiving benefits.

(ii) Commencing January 1, 2018, for all retirements that occurred prior to such date, any retirant who is employed or appointed in or to any position by a participating employer, an independent contractor or a third-party entity who contracts services with a participating employer to fill a position, without any prearranged agreement with such participating employer and not prior to 60 days after such retirant's retirement date, shall not be subject to an earnings limitation that when met or exceeded requires that the retirant not receive a retirement benefit for any month for which such retirant serves in such position. If a retirant is employed in a covered position, as defined in K.S.A. 74-49,202, and amendments thereto, the participating employer of such retirant shall pay to the system the statutorily prescribed employer contribution rate on the first \$25,000 of such retirant's compensation in a calendar year and a 30% employer contribution on any compensation in excess of \$25,000 in a calendar year during any such period of employment. If a retirant is employed by more than one participating employer or performing duties in more than one position, contributions shall be made on compensation from all such employment for that calendar year. If a retirant is employed in a non-covered position, no employer contribution shall be paid to the system.

(b) The provisions of this subsection shall not apply, except as specifically provided in this subsection, to retirants who are:

(i) Licensed professional nurses or licensed practical nurses employed by the state of Kansas in an institution as defined in K.S.A. 76-12a01(b) or 38-2302(k), and amendments thereto, the Kansas soldiers' home or the Kansas veterans' home. The participating employer of such retirant shall pay to the system the actuarially determined employer contribution based on the retirant's compensation and the statutorily prescribed employee contribution during any such period of employment;

(ii) employed by a school district in a position as provided in K.S.A. 74-4937(3), (4) or (5), and amendments thereto;

(iii) certified law enforcement officers employed by the law enforcement training center. Such law enforcement officers shall receive their benefits notwithstanding this subsection. The law enforcement training center shall pay to the system the actuarially determined employer contribution and the statutorily prescribed employee contribution based on the retirant's compensation during any such period of employment;

(iv) members of the Kansas police and firemen's retirement system pursuant to K.S.A. 74-4951 et seq., and amendments thereto, members of the retirement system for judges pursuant to K.S.A. 20-2601 et seq., and amendments thereto, or members of the state board of regents retirement plan pursuant to K.S.A. 74-4925 et seq., and amendments thereto;

(v) employed as substitute teachers without a contract or officers, employees or appointees of the legislature;

(vi) a poll worker hired to work an election day for a county election officer responsible for conducting all official elections held in the county;

(vii) employed by, or have accepted employment from, a participating employer prior to May 1, 2015. Any break in continuous employment by a retirant or move to a different position by a retirant during the effective period of this subsection shall be deemed new employment and shall subject the retirant to the provisions of this subsection. Commencing January 1, 2018, the participating employer of a retirant described in this subsection (7)(b)(vii) who is employed in a covered position, as defined in K.S.A. 74-49,202, and amendments thereto, shall pay to the system the statutorily prescribed employer contribution rate on the first \$25,000 of such retirant's compensation in a calendar year and a 30% employer contribution on any compensation in excess of \$25,000 in a calendar year during any such period of employment. If a retirant is employed by more than one participating employer or performing duties in more than one position, contributions shall be made on compensation from all such employment for that calendar year. If a retirant is employed in a non-covered position, no employer contribution shall be paid to the system;

(viii) state or local elected officials. A retirant shall not be employed in an elected office within 30 days of such retirant's retirement, except that if a retirant is filling a vacant elected office, no waiting period shall be required; or

(ix) employed by the Kansas academies of the United States department of defense STARBASE program.

(c) The participating employer shall enroll all retirants, including retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to the system when compensation is paid to a retirant as provided in this subsection. Such report shall contain a certification by the appointing authority of the participating employer that any hired retirant has not been employed by the participating employer within 60 days of such retirant's retirement and that there was no prearranged agreement for employment between the participating employer and the hired retirant. Upon request of the executive director of the system, the participating employer shall provide such information as may be needed by the executive director to carry out the provisions of this subsection. No retirant shall make contributions to the system or receive credit for service while employed under the provisions of this subsection.

(d) A participating employer may employ a retirant without regard to the compensation limitation in this subsection for a period of one calendar year or one school year, as the case may be, if the following requirements are met:

(i) The employer certifies to the board that the position being filled has been vacated due to an unexpected emergency or the employer has been unsuccessful in filling the position;

(ii) the employer pays to the system a 30% employer contribution based on the retirant's compensation during any such period of employment; and

(iii) the employer maintains documentation of its efforts to fill the position with a non-retirant and provides such documentation to the joint committee on pensions, investments and benefits upon request of the committee.

The provisions of this paragraph shall expire on January 1, 2018.

(e) An employer may submit a written assurance protocol to the system to extend the exception provided for in subsection (7)(d) by one-year increments for a total extension not to exceed three years. A written assurance protocol shall be submitted to the system for each one-year increment extension. If a school district submits a written assurance protocol, such written assurance protocol shall be signed by the superintendent and the board president of such school district. If a municipality, as defined in K.S.A. 75-1117, and amendments thereto, other than a school district, submits a written assurance protocol, such written assurance protocol shall be signed by the governing body or such governing body's designee for such municipality. Such written assurance protocol shall state that the position was advertised on multiple platforms for a minimum of 30 calendar days and that at least one of the following conditions occurred:

(i) No applications were submitted for the position;

(ii) if applications were submitted, none of the applicants met the reference screening criteria of the employer; or

(iii) if applications were submitted, none of the applicants possessed the appropriate licensure, certification or other necessary credentials for the position.

The provisions of this paragraph shall expire on January 1, 2018.

(f) Retirants who are independent contractors or employees of third-party entities who contract with a participating employer, shall not be subject to the compensation limitation or employer contribution requirements in this subsection or the requirements of subsection (7)(c) regarding enrollment and reporting to the system, so long as all of the following apply:

(A) The contractual relationship was not created to allow the retirant to continue employment with the participating employer after retirement in a position similar to the one such retirant held prior to retirement;

(B) the activities performed by the independent contractor or third-party entity are not normally performed exclusively by employees of that participating employer; and

(C) the retirant meets the classification of independent contractor as provided in K.S.A. 2020 Supp. 44-768, and amendments thereto, or activities performed by the third-party entity that employs the retirant are performed on a limited-term basis and the third-party entity is not a participating employer in the system.

(g) Nothing in this subsection shall be construed to create any right, or to authorize the creation of any right, which is not subject to amendment or nullification by act of the legislature.

(8) (a) Except as provided in subsection (8)(b), if determined by the retirement system that a retirant entered into a prearranged agreement for employment with a participating employer prior to such retirant's retirement and prior to the end of the subsequent 60-day waiting period, or the 180-day waiting period under subsection (10), the monthly retirement benefit of such retirant shall be suspended during the period that begins on the month in which the retirant is re-employed and ends six months after the retirant's termination of such employment. The retirant shall repay to the retirement system all monthly retirement benefits paid to the retirant by the retirement system that the retirant received after such employment began. The participating employer which hired such retirant shall be required to pay to the system any fees, fines, penalties or any other cost imposed by the internal revenue service and indemnify the system for any cost incurred by the system to defend any action brought by the internal revenue service based on in-service distributions which are a result of any determined prearranged agreement and for any cost incurred by the system to collect any monthly retirement benefit required to be repaid by such retirant pursuant to this subsection.

(b) For members who retired on and after July 1, 2016, and on or before July 1, 2019, if determined by the retirement system that a retirant entered into a prearranged agreement for employment with a participating employer prior to such retirant's retirement date and the subsequent 60-day waiting period, or the 180-day waiting period under subsection (10), and upon being notified of the violation, the retirant terminated such employment, the provisions of subsection (a) shall not apply. If any retirant had benefits suspended prior to July 1, 2019, such benefits shall be reimbursed by the retirement system, if the retirant terminated such prearranged employment in accordance with the provisions of this act. On and after July 1, 2019, the executive director may waive such penalties under this subsection if it is determined by the retirement system that any of the following conditions were satisfied:

(i) The retirant's total length of reemployment was less than 21 calendar days;

(ii) the retirant's total compensation during the total length of reemployment was less than 10% of the amount of such retirant's retirement benefit that would be suspended pursuant to this subsection; or

(iii) other facts and circumstances indicated that the retirant would not have been reemployed but for an error on the part of the participating employer or the retirement system in verifying the retirement status of such retirant and such retirant immediately terminated employment upon being notified of the violation.

(c) On or before the first day of each regular session of the legislature, beginning with the 2020 regular session, the executive director shall submit an annual report on the number of waivers granted pursuant to subsection (8)(b) in the prior calendar year to the joint committee on pensions, investments and benefits, the house of representatives standing committee on financial institutions and pensions and the senate standing committee on financial institutions and insurance, or the successors of such committees.

(9) For the purposes of this section a prearranged agreement for employment may be determined by whether the facts and circumstances of the situation indicate that the employer and employee reasonably anticipated that further services would be performed after the employee's retirement.

(10) (a) Notwithstanding the provisions of subsection (5) or (7) to the contrary, commencing January 1, 2018, any retirant who is retired more than 60 days, if such retirant's age on the date of retirement is 62 or older, or is retired more than 180 days, if such retirant's age on the date of retirement is less than 62, and who is subsequently hired without any prearranged agreement with the participating employer in a covered position, as defined in K.S.A. 74-49,202, and amendments thereto, or an independent contractor or a third-party entity who contracts service to fill such covered position shall not be subject to an earnings limitation that when met or exceeded requires that the retirant not receive a retirement benefit for any month for which such retirant serves in such covered position. The participating employer of

such retirant shall pay to the system the statutorily prescribed employer contribution rate on the first \$25,000 of such retirant's compensation in a calendar year and a 30% employer contribution on any compensation in excess of \$25,000 in a calendar year during any such period of employment. If a retirant is employed by more than one participating employer or performing duties in more than one position, contributions shall be made on compensation from all such employment for that calendar year.

(b) Notwithstanding the provisions of subsection (5) or (7) to the contrary, commencing January 1, 2018, any retirant who is retired more than 60 days, if such retirant's age on the date of retirement is 62 or older, or is retired more than 180 days, if such retirant's age on the date of retirement is less than 62, and who is subsequently hired without any prearranged agreement with the participating employer in a non-covered position, or an independent contractor or a third-party entity who contracts service to fill such non-covered position, shall not be subject to an earnings limitation that when met or exceeded requires that the retirant not receive a retirement benefit for any month for which such retirant serves in such non-covered position. No employer contribution shall be paid to the system on compensation paid to a retirant hired in a non-covered position.

(c) The participating employer shall enroll all retirants, including retirants under subsection (7)(b)(i), (ii), (iii), (vii) and (viii), and report to the system when compensation is paid to a retirant as provided in this subsection. Such report shall contain a certification by the appointing authority of the participating employer that any hired retirant has not been employed by the participating employer within 60 days of such retirant's retirement in the case of a retirant whose age on the date of retirement is 62 or older, or within 180 days of such retirant's retirement in the case of a retirant whose age on the date of retirement is less than 62, and that there was no prearranged agreement for employment between the participating employer and the hired retirant. Upon request of the executive director of the system, the participating employer shall provide such information as may be needed by the executive director to carry out the provisions of this subsection. No retirant shall make contributions to the system or receive credit for service while employed under the provisions of this subsection.

(d) The provisions of this subsection relating to an earnings limitation and employer contributions shall not apply to any retirant described in subsection (7)(b) or to retirants who are independent contractors or employees of third-party entities who contract with a participating employer as described in subsection (7)(f), except as specifically provided in this subsection.

(e) Nothing in this subsection shall be construed to create any right, or to authorize the creation of any right that is not subject to amendment or nullification by act of the legislature.

History: L. 1961, ch. 427, § 14; L. 1963, ch. 412, § 8; L. 1969, ch. 378, § 1; L. 1970, ch. 323, § 1; L. 1972, ch. 299, § 1; L. 1975, ch. 407, § 1; L. 1978, ch. 320, § 1; L. 1978, ch. 332, § 32; L. 1981, ch. 311, § 1; L. 1983, ch. 254, § 6; L. 1985, ch. 254, § 9; L. 1986, ch. 294, § 3; L. 1987, ch. 299, § 12; L. 1988, ch. 302, § 6; L. 1989, ch. 232, § 6; L. 1991, ch. 237, § 7; L. 1992, ch. 321, § 1; L. 1993, ch. 227, § 15; L. 1994, ch. 293, § 10; L. 1995, ch. 267, § 8; L. 1998, ch. 201, § 17; L. 2000, ch. 152, § 9; L. 2001, ch. 209, § 9; L. 2005, ch. 196, § 4; L. 2006, ch. 143, § 8; L. 2008, ch. 113, § 12; L. 2009, ch. 137, § 1; L. 2015, ch. 77, § 2; L. 2016, ch. 76, § 2; L. 2017, ch. 68, § 4; L. 2017, ch. 87, § 1; L. 2019, ch. 50, § 4; July 1.