

### **78.510 Definitions for KRS 78.510 to 78.852.**

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;
- (12) "Accumulated contributions" means the sum of all amounts deducted from the

compensation of a member and credited to his individual account in the members' account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited, or investment returns earned as provided by KRS 61.5956, on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon or investment returns earned as provided by KRS 61.5956. "Accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);

(13) "Creditable compensation":

(a) Except as provided by paragraph (b) or (c) of this subsection, means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4);

(b) Includes:

1. Lump-sum bonuses, severance pay, or employer-provided payments for purchase of service credit, which shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000);
2. Cases where compensation includes maintenance and other perquisites, but the board shall fix the value of that part of the compensation not paid in money;
3. Lump-sum payments for creditable compensation paid as a result of an order of a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, or for any creditable compensation paid in anticipation of settlement of an action before a court of competent jurisdiction, the Personnel Board, or the Commission on Human Rights, including notices of violations of state or federal wage and hour statutes or violations of state or federal discrimination statutes, which shall be credited to the fiscal year during which the wages were earned or should have been paid by the employer. This subparagraph shall also include lump-sum payments for reinstated wages pursuant to KRS 61.569, which shall be credited to the period during which the wages were earned or should have been paid by the employer;
4. Amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code; and
5. Elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4); and

(c) Excludes:

1. Uniform, equipment, or any other expense allowances paid on or after January 1, 2019, living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board;
2. For employees who begin participating on or after September 1, 2008, lump-sum payments for compensatory time;
3. Training incentive payments for city officers paid as set out in KRS 64.5277 to 64.5279;
4. For employees who begin participating on or after August 1, 2016, nominal fees paid for services as a volunteer;
5. For employees who are employed in a nonhazardous position, who began participating prior to September 1, 2008, and who retire after July 1, 2023, lump-sum payments for compensatory time upon termination of employment; and
6. Any salary or wages paid to an employee for services as a Kentucky State Police school resource officer as defined by KRS 158.441;

(14) "Final compensation" means:

- (a) For a member who begins participating before September 1, 2008, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive, except that for members retiring on or after January 1, 2019, the five (5) fiscal years shall be complete fiscal years. If the number of months of service credit during the five (5) year period is less than forty-eight (48) for members retiring prior to January 1, 2019, one (1) or more additional fiscal years shall be used. If a member retiring on or after January 1, 2019, does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months;
- (b) For a member who is employed in a nonhazardous position, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this

paragraph shall be provided from existing funds of the retirement allowance;

- (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, and who retired prior to January 1, 2019, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be used;
  - (d) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, who is employed in a nonhazardous position, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. If the member does not have five (5) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least sixty (60) months; or
  - (e) For a member who begins participating on or after September 1, 2008, but prior to January 1, 2014, who is employed in a hazardous position as provided in KRS 61.592, or for a member who begins participating prior to September 1, 2008, who is employed in a hazardous position as provided in KRS 61.592, who retires on or after January 1, 2019, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit. If the member does not have three (3) complete fiscal years that each contain twelve (12) months of service credit, then one (1) or more additional fiscal years, which may contain less than twelve (12) months of service credit, shall be added until the number of months in the final compensation calculation is at least thirty-six (36) months;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is

entitled;

- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. For members who begin participating in the system prior to January 1, 2014, no disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefits limits as set out in 26 U.S.C. sec. 415;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
  - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed nine (9) months, except for employees of school boards, in which case the period of time shall not exceed six (6) months;
  - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
  - (c) Temporary positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable;
  - (d) Probationary positions which are positions of employment with a participating employer that do not exceed twelve (12) months and that are used uniformly by the participating agency on new employees who would otherwise be eligible for participation in the system. Probationary positions shall not be renewable by the participating employer for the same employee, unless the employee has not been employed with the participating employer for a period of at least twelve (12) months; or
  - (e) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the

performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;

- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall not be considered a recipient, except for purposes of KRS 61.623;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615;
- (32) "Month" means a calendar month;
- (33) "Membership date" means the date upon which the member began participating in the system as provided in KRS 78.615;
- (34) "Participant" means a member, as defined by subsection (8) of this section, or a retired member, as defined by subsection (23) of this section;
- (35) "Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:
  - (a) Is issued by a court or administrative agency; and

- (b) Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee;
- (36) "Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order;
- (37) "Accumulated employer credit" means the employer pay credit deposited to the member's account and interest credited on such amounts as provided by KRS 16.583 and 61.597;
- (38) "Accumulated account balance" means:
  - (a) For members who began participating in the system prior to January 1, 2014, the member's accumulated contributions;
  - (b) For members who began participating in the system on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 16.583 and 61.597, the combined sum of the member's accumulated contributions and the member's accumulated employer credit; or
  - (c) For nonhazardous members who are participating in the 401(a) money purchase plan as provided by KRS 61.5956, the combined sum of the member's accumulated contributions and the member's accumulated employer contributions in the 401(a) money purchase plan;
- (39) "Volunteer" means an individual who:
  - (a) Freely and without pressure or coercion performs hours of service for an employer participating in one (1) of the systems administered by Kentucky Retirement Systems without receipt of compensation for services rendered, except for reimbursement of actual expenses, payment of a nominal fee to offset the costs of performing the voluntary services, or both; and
  - (b) If a retired member, does not become an employee, leased employee, or independent contractor of the employer for which he or she is performing volunteer services for a period of at least twenty-four (24) months following the retired member's most recent retirement date;
- (40) "Nominal fee" means compensation earned for services as a volunteer that does not exceed five hundred dollars (\$500) per month. Compensation earned for services as a volunteer from more than one (1) participating employer during a month shall be aggregated to determine whether the compensation exceeds the five hundred dollars (\$500) per month maximum provided by this subsection;
- (41) "Nonhazardous position" means a position that does not meet the requirements of KRS 61.592 or has not been approved by the board as a hazardous position;
- (42) "Accumulated employer contribution" means the employer contribution deposited to the member's account and any investment returns on such amounts as provided by KRS 61.5956; and
- (43) "Monthly average pay" means the higher of the member's monthly final rate of pay or the average monthly creditable compensation earned by the deceased member during his or her last twelve (12) months of employment.

**Effective:** April 9, 2019

**History:** Amended 2019 Ky. Acts ch. 197, sec. 5, effective April 9, 2019. -- Amended 2018 Ky. Acts ch. 107, sec. 15, effective July 14, 2018; and ch. 151, sec. 7, effective April 13, 2018. -- Amended 2017 Ky. Acts ch. 32, sec. 17, effective June 29, 2017; and ch. 126, sec. 3, effective June 29, 2017. -- Amended 2016 Ky. Acts ch. 25, sec. 2, effective July 15, 2016. -- Amended 2013 Ky. Acts ch. 120, sec. 72, effective July 1, 2013. -- Amended 2011 Ky. Acts ch.44, sec. 4, effective June 8, 2011; and ch. 52, sec. 4, effective June 8, 2011. -- Amended 2010 Ky. Acts ch. 148, sec. 7, effective July 15, 2010. -- Amended 2009 Ky. Acts ch. 71, sec. 1, effective June 25, 2009; and ch. 77, sec. 24, effective June 25, 2009. -- Amended 2008 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 25, effective June 27, 2008. -- Amended 2004 Ky. Acts ch. 36, sec. 31, effective July 13, 2004. -- Amended 2003 Ky. Acts ch. 169, sec. 13, effective March 31, 2003. -- Amended 2002 Ky. Acts ch. 52, sec. 18, effective July 15, 2002. -- Amended 2001 Ky. Acts ch. 7, sec. 8, effective June 21, 2001. -- Amended 2000 Ky. Acts ch. 210, sec. 4, effective July 14, 2000; and ch. 385, sec. 33, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 105, sec. 21, effective July 15, 1998; and ch. 300, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 31, sec. 2, effective July 15, 1996; and ch. 167, sec. 24, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 485, sec. 25, effective July 15, 1994. Amended 1992 Ky. Acts ch. 240, sec. 51, effective July 14, 1992. -- Amended 1990 Ky. Acts ch. 117, sec. 1, effective July 13, 1990; and ch. 401, sec. 13, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 349, sec. 31, effective July 15, 1988; and ch. 364, sec. 3, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 90, sec. 22, effective July 15, 1986; and ch. 176, sec. 1, effective July 15, 1986. -- Amended 1984 Ky. Acts ch. 111, sec. 49, effective July 13, 1984; and ch. 198, sec. 1, effective July 13, 1984. -- Amended 1982 Ky. Acts ch. 166, sec. 28, effective July 15, 1982; and ch. 423, sec. 15, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 311, sec. 20, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 321, secs. 32 and 40. -- Amended 1974 Ky. Acts ch. 87, sec. 1; and ch. 128, sec. 32. -- Amended 1972 Ky. Acts ch. 116, sec. 61. -- Amended 1966 Ky. Acts ch. 34, sec. 1. -- Amended 1964 Ky. Acts ch. 49, sec. 1. -- Amended 1962 Ky. Acts ch. 31, sec. 1. -- Amended 1960 Ky. Acts ch. 165, Part III, sec. 1. -- Created 1958 Ky. Acts ch. 167, sec. 1.

**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.