

21.372 Limitations and exclusions on increases in creditable compensation for members retiring on or after January 1, 2018 -- Exception for bona fide promotion or career development -- Exclusion -- Determination by board -- Administrative regulations -- Inapplicability to hybrid cash balance and money purchase plan participants. (Declared void -- See LRC Note Below)

- (1) For purposes of this section:
 - (a) "Bona fide promotion or career advancement":
 1. Means a professional advancement in substantially the same line of work held by the member in the four (4) years immediately prior to the final sixty (60) months preceding retirement or a change in employment position based on the training, skills, education, or expertise of the member that imposes a significant change in job duties and responsibilities to clearly justify the increased compensation to the member, including any circumstance when a member is elected or appointed to another court within the Court of Justice; and
 2. Does not include any circumstance where a judge or justice participating in the Judicial Retirement Plan takes a position of employment with an employer participating in any of the other state-administered retirement systems; and
 - (b) "Year" has the same meaning as in KRS 21.345(3).
- (2)
 - (a) For members retiring on or after January 1, 2018, the plan shall identify any consecutive year utilized in determining the member's final compensation in which the member's compensation increased at a rate of ten percent (10%) or more over the member's compensation in the immediately preceding year.
 - (b) Except as limited or excluded by subsections (3) and (4) of this section, any amount of increase in compensation for a year identified under paragraph (a) of this subsection that exceeds ten percent (10%) more than the member's compensation from the immediately preceding year shall not be used in the calculation of the member's final compensation for the purposes of determining the member's monthly pension benefit under KRS 21.400.
 - (c) If the member's final compensation is reduced for the purposes of determining the member's pension benefit under KRS 21.400 as provided by paragraph (b) of this subsection, the retirement system shall, notwithstanding KRS 21.460 and as applicable, refund the member contributions attributable to the reduction in creditable compensation.
- (3) In order to ensure the prospective application of the potential reduction in pension benefits as provided in subsection (2) of this section, only the compensation earned by the retiring member on or after July 1, 2017, shall be subject to reduction under subsection (2) of this section. Compensation earned by the retiring member prior to July 1, 2017, shall not be subject to reduction under subsection (2) of this section.
- (4) Subsections (2) and (3) of this section shall not apply to increases that are the direct result of a bona fide promotion or career advancement or to compensation used in accordance with KRS 61.680(7) in which the member does not have sixty (60)

months of service in the Judicial Retirement Plan.

- (5) The board of trustees shall determine whether increases in compensation during the final sixty (60) months preceding retirement constitute a bona fide promotion or career advancement and may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section. All state-administered retirement systems shall cooperate to implement this section.
- (6) This section shall not apply to:
 - (a) Employees participating in the hybrid cash balance plans as provided by KRS 21.402 or 61.597; or
 - (b) Service earned in the 401(a) money purchase plan as provided by KRS 61.5956.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 107, sec. 6, effective July 14, 2018. -- Created 2017 Ky. Acts ch. 125, sec. 2, effective March 27, 2017.

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.