

**78.535 Voluntary and involuntary cessation of participation -- Rights and benefits of employees and members after cessation -- Administrative regulations -- Commonwealth held harmless -- Actions to ensure compliance. (Effective April 1, 2021)**

Notwithstanding any other provision of KRS 78.510 to 78.852 to the contrary:

- (1) For purposes of this section:
  - (a) "Active member" means a member who is participating in the system;
  - (b) "Employer" means the governing body of a county as defined by KRS 78.510;
  - (c) "Employer's effective cessation date" means the last day of the system's plan year in the year in which the employer has elected to cease participation in the system, provided the employer has met the requirements of this section and has given the system sufficient notice as provided by administrative regulations promulgated by the system; and
  - (d) "Inactive member" means a member who is not participating with the system.
- (2) Any employer participating in the County Employees Retirement System on July 1, 2015, may:
  - (a) If the employer is a nonstock nonprofit corporation organized under KRS Chapter 273, voluntarily cease participation in the system subject to the requirements and restrictions of this section; or
  - (b) Be required to involuntarily cease participation in the system under the provisions of this section if the board has determined the employer is no longer qualified to participate in a governmental plan or has failed to comply with the provisions of KRS 78.510 to 78.852.
- (3) (a) If an employer desires to voluntarily cease participation in the County Employees Retirement System as provided by subsection (2)(a) of this section:
  1. The employer shall adopt a resolution requesting to cease participation in the system and shall submit the resolution to the board for its approval;
  2. The cessation of participation in the system shall apply to all employees of the employer;
  3. The employer shall pay for all administrative costs of an actuarial study to be completed by the County Employees Retirement System consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section;
  4. The employer shall provide an alternative retirement program for employees who will no longer be covered by the system, which may include a voluntary defined contribution plan;
  5. If the alternative retirement program established by the employer meets the qualification requirements under 26 U.S.C. sec. 401(a) and is capable of accepting trustee-to-trustee transfers of both pre-tax and post-

tax contributions, an employee of the employer ceasing participation may seek to transfer his or her account balance to the employer's qualified alternate retirement program within sixty (60) days of the employer's effective cessation date. An employee's election to transfer his or her account balance within sixty (60) days of the employer's effective cessation date is an irrevocable waiver of the right to obtain service credits in the system for the time worked for the employer ceasing participation; and

6. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 3. of this paragraph. The full actuarial cost shall not include any employee who seeks to transfer his or her account balance to the alternative retirement program as provided by subparagraph 5. of this paragraph within sixty (60) days of the employer's effective cessation date. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.
- (b) If the board determines an employer must involuntarily cease participation in the system as provided by subsection (2)(b) of this section:
1. The cessation of participation in the system shall apply to all employees of the employer;
  2. The employer shall pay for all administrative costs of an actuarial study to be completed by the County Employees Retirement System consulting actuary and for any other administrative costs for discontinuing participation in the system as determined by the board and as provided by this section; and
  3. The employer shall pay by lump sum to the system the full actuarial cost of the benefits accrued by its current and former employees in the system as determined separately for the pension fund and the insurance fund by the actuarial study required by subparagraph 2. of this paragraph. The actuarial cost shall be fixed, and the employer shall not be subject to any increases or subsequent adjustments, once the lump sum is paid.
- (4) Any employee hired on or after the employer's effective cessation date by an employer who has ceased participation in the system as provided by this section shall not, regardless of his or her membership date in the County Employees Retirement System, be eligible to participate in the County Employees Retirement System through the employer that ceased participation for the duration of his or her employment with that employer.
- (5) If an employer has ceased participation in the system as provided by this section:
- (a) The rights of recipients and the vested rights of inactive members accrued as of the employer's effective cessation date shall not be impaired or reduced in any manner as a result of the employer ceasing participation in the system; and

- (b) Employees of the employer ceasing participation shall accrue benefits through the employer's effective cessation date but shall not accrue any additional benefits in the County Employees Retirement System, including earning years of service credit through the ceased employer, after the employer's effective cessation date for as long as they remain employed by the employer. The day after the employer's effective cessation date, each employee described by this paragraph shall be considered an inactive member with respect to his or her employment with the employer that ceased participation and, subject to the provisions and limitations of KRS 78.510 to 78.852, shall:
1. Retain his or her accounts with the County Employees Retirement System and have those accounts credited with interest in accordance with KRS 78.510 to 78.852;
  2. Retain his or her vested rights in accordance with paragraph (a) of this subsection; and
  3. Be eligible to take a refund of his or her accumulated account balance in accordance with KRS 61.625 or any other available distribution if eligible.
- (6) For purposes of this section, the full actuarial cost shall be determined by the County Employees Retirement System consulting actuary separately for the pension fund and the insurance fund using the assumptions and methodology established by the system specifically for determining the full actuarial cost of ceasing participation as of the employer's effective cessation date. For purposes of determining the full actuarial cost, the assumed rate of return used to calculate the cost shall be the lesser of the assumed rate of return utilized in the system's most recent actuarial valuation or the yield on a thirty (30) year United States treasury bond as of the employer's effective cessation date, but shall in no case be lower than the assumed rate of return utilized in the system's most recent actuarial valuation minus three and one-half percent (3.5%).
- (7) The system shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this section.
- (8) Any employer who voluntarily ceases participation, or who is required to involuntarily cease participation as provided in this section, shall hold the Commonwealth harmless from damages, attorney's fees, and costs from legal claims for any cause of action brought by any member or retired member of the departing employer.
- (9) In lieu of cessation of participation of a county which fails to fully comply with the provisions of KRS 78.510 to 78.852, the board may file an action in the Franklin Circuit Court to collect money owed and to attach so much of the general fund of the delinquent county as is necessary to achieve full compliance with the provisions of KRS 78.625.
- (10) The board may utilize the provisions of KRS 78.625(3)(b) or (4) to ensure employer compliance and payment of any amount payable by an employer under the provisions of this section.

**Effective:** April 1, 2021

**History:** Amended 2020 Ky. Acts ch. 79, sec. 34, effective April 1, 2021. -- Amended 2015 Ky. Acts ch. 28, sec. 8, effective June 24, 2015. -- Amended 1992 Ky. Acts ch. 240, sec. 53, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 11, sec. 17, effective July 15, 1988. -- Amended 1980 Ky. Acts ch. 188, sec. 71, effective July 15, 1980. -- Created 1964 Ky. Acts ch. 49, sec. 3.