

# MEMORANDUM

TO: Designated Agents

FROM: Judy Lambert, Member Services Officer  
Laurie McKinnon, Assistant General Counsel

DATE: January 22, 2001

RE: (1) Partial Lump Sum Option Update  
(2) Independent Contractor Status / Return to Employment / Earnings Limitation  
(3) Life Insurance Conversion  
(4) Last Day on Payroll / Disability Benefit Eligibility  
(5) Concurrent Employment with More than One School Employer  
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(8) New KPERS-15 Form Availability  
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## **(1) Partial Lump Sum Option Update**

KPERS staff is currently sending estimates of the new lump sum option to all members who have applied to retire in 2001. This will allow eligible members to change their retirement date to July 1, 2001, if they wish to take advantage of the new option. Estimates for those wishing to retire on or after July 1, 2001, will be available beginning in March 2001.

## **(2) Independent Contractor Status / Return to Employment / Earnings Limitation**

The situation is a relatively common one: an employee leaves a covered position by way of retirement and after the statutorily-mandated 30 day wait (or within two years of retirement), is rehired by the same employer. K.S.A. 74-4914(5) provides that an employee in such circumstances be held to a \$15,000 earnings limitation. Specifically, K.S.A. 74-4914(5) states, in relevant part,

“If a retirant who retired on or after July 1, 1988, is employed or appointed in or to any position or office for which compensation for service is paid in an amount equal to \$15,000 or more in any one such calendar year, by any 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.”

One way employers have tried to get around the earnings limitation is to rehire the worker as an independent contractor. Once a worker is characterized as an independent contractor by the employer, the issue becomes a federal one as the Internal Revenue Service has created a 20-factor test to determine whether or not a worker is actually an independent contractor or is, in fact, an employee. Rev. Rul. 87-41, 1987-1, C.B. 296. The IRS 20-factor test includes, but is not limited to: What sort of training is required of the individual? Who hires, supervises and pays assistants for the individual? Who determines the individual's hours? Will the individual work on the employer's premises? Who furnishes tools and materials? Does the employer maintain the right to terminate the individual? There are several more factors obviously, but the central issue appears to be one of control. If the employer preserves the right to control the worker in largely the same way the employer did in the previous employment situation, then the worker is most likely not an independent contractor and is not eligible to avoid the \$15,000 earnings limitation. In summary, state law says certain employees are under a \$15,000 earnings limit. However, whether an individual worker is an employee or an independent contractor is a question of federal tax law.

If an employer decides to rehire a worker as an independent contractor, KPERS recommends the employer consult an attorney, or any other expert or source to whom the employer normally turns to for guidance regarding payroll withholding and tax matters.

### **(3) Life Insurance Conversion**

#### **Procedures for Converting Optional and Group Life Insurance:**

- The employer gives notice to the retiring or terminating employee, or employee moving to a non-covered position, that conversion is available;
- If the employee is interested in converting, a Life Conversion Information form should be completed and sent to KPERS;
- The employer must supply information regarding the employee's last day on payroll, current annual salary, Basic Group and Optional Group Life Insurance then in effect, and the signature authority in Section 2 of the conversion form;
- The Life Conversion Information form is forwarded to KPERS and is in turn forwarded by KPERS to the insurance company.
- The insurance company will contact the employee after receiving the Life Insurance Conversion Information form from KPERS.

All active KPERS members, and state employees in their "year of service" before becoming KPERS members, have basic group life insurance and long-term disability insurance coverage. Employees of local employers also have coverage in their "year of service" if the employer has elected to affiliate for this coverage. The entire cost of the basic group life insurance program is paid by the employer. Basic group life insurance provides an insured death benefit which is currently 150 percent of a member's annual rate of compensation.

Upon retirement, termination of employment, or moving into a non-covered position, members may convert their KPERS basic group life insurance and any optional group life insurance they have purchased to an individual policy. The conversion option is available through Security Benefit Group of Insurance Companies and is not available at group rates. While the cost of this insurance is competitive with other carriers, the primary advantage is that issuance of the policy does not require proof of good health of the former member. In addition, once this policy is converted, it no longer is a term life policy; it then becomes an “individual permanent plan of insurance,” also called “whole life.”

Employees have 31 days total from the last day on the payroll to complete the paperwork, have the paperwork processed by the employer, and for the employee to make the first premium to the insurance carrier. K.S.A. 40-435 provides that individuals eligible to convert life insurance be “given notice of the existence of such right at least 15 days prior to the expiration date of such period.” If timely notice is not given, the individual will be given an extension. “The additional period shall expire 15 days after the individual is given such notice but in no event shall such additional period extend beyond 60 days after the expiration date of the period provided in such policy.” *Id.* Because KPERS does not know immediately when an employee is terminating or retiring, the employer is responsible for providing the conversion information in a timely manner to the terminating or retiring employee.

#### **(4) Last Day on Payroll / Disability Benefit Eligibility**

The last day on payroll for employees going on KPERS long-term disability is sometimes well beyond the basic 180-day waiting period. This fact cannot be avoided by making a lump sum payment for remaining sick leave at the end of 180 days. On July 1, 1994, the law governing the waiting period for disability benefits was amended for clarification. Under the amendment, not only does the employee have to wait 180 days or until there is no more right to collect compensation from the employer—whichever is later—but if the employer pays the employee a lump sum at the end of the 180-day waiting period, the disability administrator will pro-rate the lump sum payment over the number of days it covers, and that period will be added to the disability waiting period. If this should happen, and is discovered after benefits begin, the lump sum will be charged back against the employee, and the employee will owe the disability program for an overpayment.

#### **(5) Concurrent Employment with More than One School Employer**

Individuals may work in non-covered positions for more than one school employer. Such individuals are called “concurrent employees” and may be eligible for KPERS coverage. However, because the individual may appear at first glance to be ineligible for KPERS coverage based on too few hours, it is essential that employers ask all employees whether or not they are working for other schools in addition to the employer’s school.

K.S.A. 74-4932(4) defines school employee as “any employee of a participating employer which is an eligible employer, as specified in K.S.A. 74-4931 and amendments thereto, whose employment is not seasonal or temporary and whose employment requires at least 630 hours of work per year or 3.5 hours of work per day for at least 180 days or any employee who is concurrently employed by two or more eligible employers, as specified in K.S.A. 74-4931 and amendments thereto, whose combined employment is not seasonal or temporary and whose combined employment requires at least 630 hours of work per year or 3.5 hours of work per day for at least 180 days.” (Emphasis added.)

Given that employers can be held liable for arrearages which may occur when an employee is eligible for KPERS coverage but an employer does not report the employee, it is imperative that the employer determine whether or not a part-time school employee has concurrent employment with another school employer. If the employer discovers that an employee is working for another school employer in addition to the employer’s, inform the employee of the “concurrent rule,” as outlined in the statute, above, and establish whether or not the employee is eligible to be covered under KPERS.

If an employee is found to be a concurrent employee who is eligible for KPERS coverage, all affected employers should utilize the KPERS-1C form for contribution reporting purposes. The employer provides the KPERS-1C to the employee on the first day of the employee’s employment and it is the responsibility of the employee to return the form to the employer for reporting to KPERS. Employers are encouraged to provide the employee with a KPERS –1C each year. When the employee leaves the concurrent position, the employer must notify KPERS immediately. KPERS will then notify the other concurrent employer so that contributions can be stopped and any refunds can be made at that time.

## **(6) Members Moving from Non-covered to Covered Employment**

It is possible that an employee who was hired in a non-covered position might at a later date end up in a covered position due to a change in the employee’s job requirements. Employers need to pay close attention to hours worked by permanent part-time employees lest they work enough hours to fall under KPERS’ statutory definition of an employee (K.S.A. 74-4902(14), quoted below), and an arrearage situation should develop.

K.S.A. 74-4902(14) defines employee, in relevant part, as “any appointed or elective officer or employee of a participating employer whose employment is not seasonal or temporary and whose employment requires at least 1,000 hours of work per year.” (Emphasis added.)

K.S.A. 74-4932(4) defines school district employees, in relevant part, as “any employee of a participating employer which is an eligible employer . . . whose employment is not seasonal or temporary and whose employment requires at least 630 hours of work per year or 3.5 hours of work per day for at least 180 days or any employee who is

concurrently employed by two or more eligible employers . . . whose combined employment is not seasonal or temporary and whose combined employment requires at least 630 hours of work per year or 3.5 hours of work per day for at least 180 days.”  
(Emphasis added.)

If an employee appears to be retroactively eligible for KPERS coverage, the employer must retrace the employee’s hourly work history and make a decision as to when the employee became eligible for coverage. KPERS membership should be established at that date for school employees, or covered position date for non-school employees, if local employer, and reporting on behalf of the now-covered employee should be completed. A non-school employee must then wait one year from the date the employer determined the employee was in a covered position before the employee’s membership date. KPERS must emphasize the importance of reporting such employees, as arrearages on behalf of the employees’ KPERS contributions will be the responsibility of the employer if the arrearage exceeds six months.

#### **(7) Employees Working for the Same Employer Appearing on the Inactive List**

Some employers find it confusing when KPERS sends out a list of inactive members and there are individuals on the list who, while now inactive for KPERS purposes, still are employed with the employer. KPERS has a reason for this practice. When an employer reports an employee as terminated on the annual contribution report, this information is updated on the employee’s computer record. This information tells anyone looking at the record that the employee (a) is no longer contributing to KPERS; (b) is no longer covered by Basic Group and/or Optional Group Life Insurance; and (c) has five-year membership protection (where the member’s account will receive interest for a five year period following termination) if they are not already vested.

A printout—the inactive list—is generated and sent to employers with a request for addresses for the inactive employees on the list. The list is returned to KPERS and the addresses for inactive employees are entered into the computer records of the now inactive members. Because KPERS is currently engaged in transferring paper documents and files into computer, or “imaged,” files, the process of requesting addresses for currently employed, but inactive, employees, may change. For now, however, KPERS must transfer inactive members to this list and request the addresses of these individuals in order to send appropriate paperwork to the inactive members, themselves, as well as maintain a database of inactive members (regardless of their non-covered status with the employer) for internal procedural purposes as well.

#### **(8) New KPERS-15 Form Availability**

KPERS staff is currently redesigning the KPERS-15, Application for Retirement Benefit form, to include the new lump sum option. The new forms will be available in early

February 2001. As soon as the revised forms are available, KPERS will make them available to the employers by mailing some and having them available to download and copy from the KPERS web site, [www.kpers.org](http://www.kpers.org). Old forms will not be accepted for anyone retiring on or after July 1, 2001, so please wait to submit those retirements until after you receive the new forms.

**(9) KPERS Information Manuals in Spanish**

KPERS is currently looking into the feasibility of having its Information Manual translated into Spanish due to the number of KPERS members whose primary language is Spanish. We would appreciate hearing from your agency or organization if you have members who have a need for a Spanish-language Information Manual. Please contact us at [kpers@kpers.org](mailto:kpers@kpers.org) or call our toll-free information line at 1-888-ASK-KPERS, to let us know if you are interested in this service. We may ask you to specify how many Spanish-language manuals you anticipate you would need.