

UPDATE: Waivers Now Extend to All Retirees in All Positions
Reemployment of Retired Members of the Kentucky Retirement System

As cities continue to operate and provide essential services to our citizens during the COVID-19 pandemic, we are seeing an increase in quarantine or isolation recommendations for city employees. Cities are preparing to address potential staffing shortages if several employees must quarantine or isolate at the same time. Reemployment of retirees is one strategy cities are using to bridge this staffing gap.

On March 31, 2020, the Governor issued [Executive Order 2020-265](#) waiving the requirement for prior approval from the Kentucky Retirement System (KRS) of reemployment of retired first responders. This order is limited to law enforcement officers, emergency medical service personnel, firefighters, state park rangers, and state corrections officers.

On April 2, 2020, the governor expanded the waiver of prior approval through [Executive Order 2020-266](#) to apply to all retired members of KRS. This new order mirrors the employer's requirements under the first order but expands the applicability to all retirees, regardless of the position for which they are hired. The new order also clarifies that its provisions are in addition to E.O. 2020-265 and "shall not affect any action taken by a retired member or participating employer under E.O. 2020-265."

On April 7, 2020, KRS sent an email clarifying their interpretation of required retirement date for eligibility under the executive orders. The email states all retirees, whether a first responder covered by Executive Order 2020-265 or a retiree covered by Executive Order 2020-265, must have a retirement date of March 1, 2020. The interpretation is based on the need for the bona fide separation in service, discussed below.

The orders also waive any and all "break in service" requirements for reemployed retirees so long as the city provides KRS with a written statement of why the city had a need that did not allow for the break in service due to the COVID-19 Kentucky State of Emergency. It is unclear from the orders of the timing for providing the written statement to KRS. Cities should have a statement prepared for each hire and include on the mandatory list, described below. A sample statement—that needs to be tailored to the circumstances in your city—is included:

The COVID-19 pandemic which led to the state of emergency under Executive Order 2020-215 has also created staffing shortages in the City of ____'s _____ department(s) that prevented the break in service for [employee's name].

Keep in mind the "bona fide separation in service" required by federal law remains in effect. This means the city cannot have a prearranged agreement with a KRS employee to rehire them once they retire. The certification that there is no prearranged agreement will be due to KRS within 30 days of the end of the Kentucky State of Emergency.

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- Cities shall submit all forms required for reemployment of retirees under KRS 61.637 and 105 KAR 1:390.
- Cities shall maintain a list of reemployed retirees and must submit the list to KRS. The list shall contain:

- Retired member's name;
- Retired member's member ID number;
- A statement as to whether the retired member was paid or not paid;
- If the retired member was paid, a statement of the amount the retired member was paid, the hourly rate of pay for the retired member, and the number or hours the retired member worked;
- If a retired member had not observed the break in service, a statement as to why the break was not allowed as discussed above; and
- Cities shall also submit the certification that no prearranged agreement existed between the employer and employee [(EO 2020-265, 7) and (EO 2020-266, 6)]

If the city is exploring the option of having any retiree volunteer, the city may need to consider enacting an order creating volunteer positions if the city does not have a volunteer classification in their personnel policy. For a sample or for other questions, please contact Personnel Services Attorney Courtney Risk Straw and Personnel Services Manager Andrea Shindlebower Main.