

## MEMORANDUM

To: Senate Committee on Financial Institutions and Insurance

From: Alan D. Conroy, Executive Director

Date: March 16, 2017

Subject: SB 205; crediting of service during administrative leave

SB 205 amends K.S.A. 74-4913 and K.S.A. 74-4956 by expanding the definition of participating service for both KPERS and KP&F members. The new language specifies that any period of time away from work or normal duties while in a paid status authorized and approved by a participating employer constitutes participating service. The language further specifies that it includes, without limit, any administrative leave with pay and any paid vacation leave, sick leave, personal leave, workers' compensation leave, and light duty or temporary duty assignment. This definition would apply retroactively to July 1, 2014.

### **Current Processes**

The list of leave types that is included in SB 205 is currently addressed administratively by KPERS without specific statutory language. The type of leave, and how the member's employer reports it, can affect whether or not a member receives service credit for the period of time the member is on leave.

KPERS participating service credit is earned quarterly. A full quarter of service credit is credited for every quarter in which the member works.

### **Sick and Annual Leave**

If a member uses sick or annual leave for any absence, the member will receive service credit for that period. During sick or annual leave, the member's employer generally is reporting the full compensation, and both employer and employee contributions should be paid. Paid personal leave is handled similarly.

### **Light Duty Assignment**

KPERS is not informed when a member is moved into a light duty assignment. However, if a member is earning wages in the light duty assignment, the member's employer would be required to report compensation, and the member receives service credit.

### **Temporary Duty**

Temporary duty is specifically excluded from the definition of an employee for KPERS membership purposes per the definitions of "employee" under K.S.A. 74-4902(14) and K.S.A. 74-4952(4) for KPERS and KP&F employees, respectively. Currently, if a member is placed on temporary duty the member would not be eligible to earn service credit for that position.



### **Worker's Compensation**

Workers' compensation leave could potentially affect a member's service credit depending on how the employer reports the member's compensation to KPERS. Workers' compensation will generally cover two-thirds of lost compensation due to work related injury. Workers' compensation pay is not to be reported as compensation for KPERS purposes by the member's employer. When a member's reported compensation drops by more than 50%, KPERS information technology system gives the employer an "informational edit." An informational edit does not stop the agency from completing the report, it simply informs the employer that there is a potential issue with a member's reported compensation. Often the agency will call KPERS when they have someone going on workers' compensation, and KPERS will explain this process. If a workers' compensation issue is not reported correctly on the payroll report, it will usually be caught when a retirement application is processed and adjustments are processed then to issue the refunds. KPERS is in the process of redesigning the employer reporting system and these scenarios are set to change to require action from KPERS to allow an employer to file their payroll report if they have an employee whose compensation drops more than 50%.

### **Paid Administrative Leave**

Paid administrative leave is another situation where a member's service credit could be affected. Currently any member on administrative leave from the member's job for more than 10 days is no longer considered to be in active status. However, this requires employers to stop reporting the member's compensation during the period of administrative leave. As discussed earlier, a member who works part of a payroll quarter receives credit for that quarter. If a member was placed on paid administrative leave, was correctly reported by the employer, and was on the administrative leave for more than an entire payroll quarter, then the member could lose a quarter of credited service.

However, if a KP&F member is injured on the job, placed on administrative leave for longer than a calendar quarter, but ultimately goes on disability, then that member would be credited for the period of time that they were on paid administrative leave and the member's service credit would not be affected.

### **Other Personnel Situations**

In the past, KPERS has been made aware of situations where there was a personnel issue and an employee was placed on paid administrative leave until the employee reached retirement eligibility so that the employee could then retire with KPERS benefits rather than going through termination proceedings. Essentially, KPERS was being used to solve personnel matters. Such scenarios could be a misuse of the Retirement System and a primary reason that paid administrative leave has not been counted towards participating service credit for KPERS since its inception.

The bill, as currently written, makes the definition of creditable service very broad for all KP&F and all KPERS members. The new definition would allow employers in some situations to use KPERS as a personnel management tool, which would be a foundational shift in policy.

The administrative questions described above could be alleviated if the proposed language was more narrowly focused. Narrowing the language to cover specific situations that the Legislature may wish to cover, such as administrative leave for a review of the discharge of a firearm or administrative leave due to a job related injury, would be helpful from an administrative standpoint.

### **Effective Date**

SB 205 as introduced includes a retroactive effective date of July 1, 2014. Retroactive effective dates have been applied to KPERS statutory changes in the past, where the Legislature was aware of specific circumstances occurring before the effective date that they wished to address.

Amendment language can be drafted to address the issues that are identified above.

### **House Bill 2289**

HB 2289, which was identical to SB 205, as introduced, has passed the House Committee on Financial Institutions and Pensions. The House Committee amended HB 2289 with language that addresses the issues that KPERS identified in the bill as introduced. As amended, HB 2289 would:

- Limit the application of the new policy to police officers and firefighters in the KPERS system and KP&F members;
- Requires a member to return to work in the same or similar position for the employer to receive the service credit with the following exceptions:
  - If a member dies service is credited for the time on leave;
  - If a member is disabled and cannot return to work the service is credited for the time on leave; or
  - If a member voluntarily decides to terminate employment the employee will receive credit for up to 1-year of leave.

I would be happy to respond to any questions the Committee may have.