



December 4, 2020

Sean Gatewood
Kansas Emergency Medical Services Association
6021 SW 29th Street – STE PMB 359
Topeka, Kansas 66614

Dear Mr. Gatewood:

The Kansas Public Employees Retirement System (KPERS) thanks you for your questions on behalf of the Kansas Emergency Medical Services Association (KEMSA) regarding emergency medical services (EMS) staff who are employed by KPERS participating employers on a part-time basis that requires less than 1,000 hours per year. We understand that the pandemic has created staffing shortages that are causing certain EMS employees to exceed the 1,000-hour limit in a single calendar year, which creates KPERS membership eligibility issues.

The Kansas Public Employees Retirement Act at K.S.A. 74-4902(14) defines a covered employee as an “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.” Employees are employed in positions that are already created and designated as covered (i.e., not seasonal or temporary and requiring 1,000+ hours annually) or non-covered (i.e., seasonal, temporary, less than 1,000 annually). However, occasionally a set of circumstances arises that causes an employee in a non-covered position to work over 1,000 hours in a year. This is not cause for concern when it happens in a single year.

KPERS recommends that employers do not change position descriptions when a non-covered employee goes over the 1,000-hour minimum for a single year until or unless the position appears to have legitimately changed from non-covered to covered. We typically advise employers that if an employee has been in a non-covered position that has gone over the 1,000 hour requirement for just one year, to track the position going forward to determine if it is actually necessary to the employer that the position become covered, or if it was simply a one-off and the following year it is back to under 1,000 hours. Once a position requires 1,000 hours for at least two consecutive years, KPERS recommends that the employer make that position a covered one permanently.

One of the questions asked was how to know what qualifies as an extraordinary situation with respect to part-time people doing the same work as a full-time employee. Eligible KPERS positions are classified only by (1) the number of hours required (1,000 and over) and (2) not seasonal or temporary. Whether an employee is classified by the employer as part-time or full-time is not at issue. If a part-time position always requires 1,000 or more hours, then it is going to be a covered position. However, if an employee’s position description does not require 1,000 hours or over, then the position, itself, is a non-covered position. If, during the COVID-19 pandemic an employee in a non-covered position works over 1,000 hours, then it is up to the

Scott Gatewood
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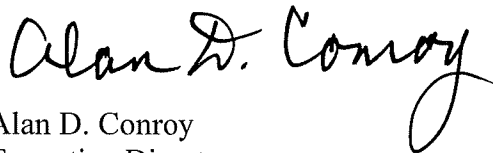
employer to monitor the position to see if it's become a covered position or if the hours worked the next year are under 1,000 hours. Any set of circumstances that cause the employer's non-covered positions to suddenly require over 1,000 hours would be considered extraordinary. But again, it's about what the position requires and being a part-time or full-time employee is not important for KPERS' purposes.

There are no penalties against employers for utilizing non-covered workers during a particularly difficult year. It is not possible for KPERS to know what exceptions might be necessary, nor does KPERS have the authority to make bright-line exceptions regarding state laws. KPERS cannot suspend or defer the 1,000-hour rule, which is set forth in state statute. Again, we can advise employers that if they go through a period where additional hours are needed, but the position will not fundamentally change going forward, it is acceptable that the employer not provide membership for that one year. However, if the employer has the employee work two or more years for 1,000+ hours, then the employer should revisit the position description to determine if it should be changed to a covered position.

The same is true regarding temporarily increasing the earnings limit for retirees. That provision is mandated in state law at K.S.A. 74-4914(7) and only the Kansas Legislature can amend the statute.

We appreciate the opportunity to assist you with these timely questions and hope our answers have been helpful to you. If you have any additional questions or concerns, please feel free to contact our office.

Sincerely,

A handwritten signature in black ink that reads "Alan D. Conroy". The signature is written in a cursive, flowing style with a large, prominent loop at the end of the last name.

Alan D. Conroy
Executive Director