

Part 2

Membership Eligibility

49-13-201 System membership -- Eligibility.

- (1) Beginning July 1, 1986, the state and its educational institutions shall participate in this system.
 - (a) A person entering regular full-time employment with the state or its educational institutions after July 1, 1986, but before July 1, 2011, is eligible for service credit in this system.
 - (b) A person entering regular full-time employment with the state or its educational institutions after July 1, 2011, who has service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, is eligible for service credit in this system.
 - (c) A regular full-time employee of the state or its educational institutions prior to July 1, 1986, may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.
- (2) An employer, other than the state and its educational institutions, may participate in this system except that once an employer elects to participate in this system, that election is irrevocable and the election must be made before July 1, 2011.
 - (a) Until June 30, 2011, a person initially entering regular full-time employment with a participating employer which elects to participate in this system is eligible for service credit in this system.
 - (b) A person in regular full-time employment with a participating employer prior to the participating employer's election to participate in this system may either become eligible for service credit in this system or remain eligible for service in the system established under Chapter 12, Public Employees' Contributory Retirement Act, by following the procedures established by the board in accordance with this chapter.
- (3) Notwithstanding the provisions of Subsections (1) and (2), a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 15, 2014 General Session

49-13-202 Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Nondiscrimination requirements -- Service credit purchases.

- (1)
 - (a) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.
 - (b) In addition to their participation in this system, participating employers may provide or participate in any additional public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.
- (2) The following employers may be excluded from participation in this system:
 - (a) an employer not initially admitted or included as a participating employer in this system before January 1, 1982, if:
 - (i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or

- (ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;
 - (b) an employer that is a charter school authorized under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and does not elect to participate in accordance with Section 53A-1a-512;
 - (c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (5);
 - (d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes an election of nonparticipation in accordance with Subsection (5); or
 - (e) an employer that is a risk management association initially created by interlocal agreement before 1986 for the purpose of implementing a self-insurance joint protection program for the benefit of member municipalities of the association.
- (3) If an employer that may be excluded under Subsection (2)(a)(i) elects at any time to provide or participate in any type of public or private retirement, supplemental or defined contribution plan, either directly or indirectly, except for Social Security, the employer shall be a participating employer in this system regardless of whether the employer has applied for admission under Subsection (4).
- (4)
- (a) An employer may, by resolution of its governing body, apply for admission to this system.
 - (b) Upon approval of the resolution by the board, the employer is a participating employer in this system and is subject to this title.
- (5)
- (a)
 - (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.
 - (ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state may make an election of nonparticipation as an employer for retirement programs under this chapter.
 - (iii) On or before July 1, 2010, an employer described in Subsection (2)(e) may make an election of nonparticipation as an employer for retirement programs under this chapter.
 - (b) An election provided under Subsection (5)(a):
 - (i) is a one-time election made no later than the time specified under Subsection (5)(a);
 - (ii) shall be documented by a resolution adopted by the governing body of the employer;
 - (iii) is irrevocable; and
 - (iv) applies to the employer as described in Subsection (5)(a)(i), (ii), or (iii) and to all employees of that employer.
 - (c) The employer making an election under Subsection (5)(a) may offer employee benefit plans for its employees:
 - (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or
 - (ii) under any other program.
- (6)

- (a) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.
- (b) For a purchase made under this Subsection (6), an employee is not required to:
 - (i) have at least four years of service credit before the purchase can be made; or
 - (ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

Amended by Chapter 15, 2014 General Session
Amended by Chapter 201, 2014 General Session
Amended by Chapter 363, 2014 General Session

49-13-203 Exclusions from membership in system.

- (1) The following employees are not eligible for service credit in this system:
 - (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
 - (b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;
 - (c) an employee serving as an exchange employee from outside the state;
 - (d) an executive department head of the state or a legislative director, senior executive employed by the governor's office, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;
 - (e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (f) an employee who is employed with an employer that has elected to be excluded from participation in this system under Subsection 49-13-202(5), effective on or after the date of the employer's election under Subsection 49-13-202(5); or
 - (g) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:
 - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
 - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b).
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
 - (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
 - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee

when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.

- (3)
 - (a) Upon cessation of the participating employer contributions, an employee under Subsection (1) (b) is eligible for service credit in this system.
 - (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before the date of the election under Subsection 49-13-202(5) is not affected under Subsection (1)(f).
- (4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:
 - (a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;
 - (b) an elected official;
 - (c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;
 - (d) an employee of the Governor's Office of Management and Budget;
 - (e) an employee of the Governor's Office of Economic Development;
 - (f) an employee of the Commission on Criminal and Juvenile Justice;
 - (g) an employee of the Governor's Office;
 - (h) an employee of the State Auditor's Office;
 - (i) an employee of the State Treasurer's Office;
 - (j) any other member who is permitted to make an election under Section 49-11-406;
 - (k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee;
 - (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members; and
 - (m) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- (5)
 - (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).
 - (b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer.
- (6)
 - (a) In accordance with this section, Section 49-12-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.
 - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (7) Each participating employer shall:
 - (a) file employee exemptions annually with the office; and
 - (b) update the employee exemptions in the event of any change.
- (8) The office may make rules to implement this section.

Amended by Chapter 315, 2015 General Session

Amended by Chapter 364, 2015 General Session

49-13-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.

- (1)
 - (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or in a retirement system with a public or private retirement system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1)(a).
 - (b) The election is final, and no right exists to make any further election.
- (2)
 - (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
 - (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:
 - (i) this system; or
 - (ii) a public or private system, organization, or company designated by the Board of Regents.
 - (c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.
- (3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.
- (4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.
- (5)
 - (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system shall have a one-time irrevocable election to participate in this system.
 - (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
 - (c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.
 - (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.
- (6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a) may purchase periods of employment while covered under another retirement program by complying with the requirements of Section 49-11-403.
- (7) The board shall make rules to implement this section.

Amended by Chapter 15, 2014 General Session

49-13-205 Conversion to system -- Time schedule -- Conversion windows.

- (1) An employee governed under Section 49-13-201 shall make the election to participate in this system within six months of July 1, 1986.
- (2)
 - (a)
 - (i) An employer governed under Sections 49-13-201 and 49-13-202 shall make the election to participate in this system within six months of July 1, 1986.
 - (ii) The employer shall indicate whether or not it elects to participate by enacting a resolution or ordinance to that effect.
 - (iii) Prior to the enactment of the resolution or ordinance, a hearing shall be held by the employer, at which all employees of the political subdivision shall be given an opportunity to be heard on the question of participating in this system.
 - (iv) Notice of the hearing shall be mailed to all employees within 30 days of the hearing and shall contain the time, place, and purpose of the hearing.
 - (b) A regular full-time employee has six months from the date the employer elects to participate in this system in which to make the election to participate in this system and become eligible for service credit in this system.
- (3) Subsections (1) and (2) shall be used to provide a second time period of conversion to this system beginning July 1, 1990.
- (4) Subsections (1) and (2) shall be used to provide a third time period of conversion to this system beginning July 1, 1995.
- (5) Subsection (2) shall be used to provide a fourth time period of conversion to this system beginning July 1, 2009 for an entity created under the authority of Title 11, Chapter 13, Interlocal Cooperation Act, and the entity's employees.
- (6) Subsection (2) shall be used to provide a fifth time period of conversion to this system beginning July 1, 2015.
- (7) A member of the Contributory Retirement System who is employed by one agency and who either transfers to or is reemployed by another agency shall be enrolled in the Noncontributory Retirement System as of the date of employment, if the participating employer has elected to participate in the Noncontributory Retirement System.

Amended by Chapter 176, 2015 General Session