

Effective 5/12/2015

Superseded 5/10/2016

49-22-205 Exemptions from participation in system.

(1) Upon filing a written request for exemption with the office, the following employees are exempt from participation in the system as provided in this section:

- (a) an elected official;
- (b) an executive department head of the state;
- (c) a member of the State Tax Commission;
- (d) a member of the Public Service Commission;
- (e) a member of a full-time or part-time board or commission;
- (f) an employee of the Governor's Office of Management and Budget;
- (g) an employee of the Governor's Office of Economic Development;
- (h) an employee of the Commission on Criminal and Juvenile Justice;
- (i) an employee of the Governor's Office;
- (j) an employee of the State Auditor's Office;
- (k) an employee of the State Treasurer's Office;
- (l) any other member who is permitted to make an election under Section 49-11-406;
- (m) a person appointed as a city manager or appointed as a city administrator or another at-will employee of a municipality, county, or other political subdivision;
- (n) 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
- (o) an employee of the Utah Science Technology and Research Initiative created under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

(2) (a) A participating employer shall prepare a list designating those positions eligible for exemption under Subsection (1).

(b) An employee may not be exempted unless the employee is employed in a position designated by the participating employer under Subsection (1).

(3) (a) In accordance with this section, Section 49-12-203, and Section 49-13-203, 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.

(4) Each participating employer shall:

- (a) file each employee exemption annually with the office; and
- (b) update an employee exemption in the event of any change.

(5) Beginning on the effective date of the exemption for an employee who elects to be exempt in accordance with Subsection (1):

- (a) for a member of the Tier II defined contribution plan:
 - (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the nonelective contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a); and
 - (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- (b) for a member of the Tier II hybrid retirement system:

- (i) the participating employer shall contribute the nonelective contribution and the amortization rate described in Section 49-22-401, except that the contribution is exempt from the vesting requirements of Subsection 49-22-401(3)(a);
 - (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
 - (iii) the member is not eligible for additional service credit in the system.
- (6) If an employee who is a member of the Tier II hybrid retirement system subsequently revokes the election of exemption made under Subsection (1), the provisions described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- (7)
 - (a) All employer contributions made on behalf of an employee shall be invested in accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election period under Subsection 49-22-201(2)(c) is expired if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) continues employment with the participating employer through the one-year election period under Subsection 49-22-201(2)(c).
 - (b) An employee is entitled to receive a distribution of the employer contributions made on behalf of the employee and all associated investment gains and losses if the employee:
 - (i) elects to be exempt in accordance with Subsection (1); and
 - (ii) terminates employment prior to the one-year election period under Subsection 49-22-201(2)(c).
- (8)
 - (a) The office shall make rules to implement this section.
 - (b) The rules made under this Subsection (8) shall include provisions to allow the exemption provided under Subsection (1) to apply to all contributions made beginning on or after July 1, 2011, on behalf of an exempted employee who began the employment before May 8, 2012.