

Part 2

Membership Eligibility

49-22-201 System membership -- Eligibility.

- (1) Beginning July 1, 2011, a participating employer shall participate in this system.
- (2)
 - (a) A person initially entering regular full-time 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, is eligible:
 - (i) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (ii) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan.
 - (b) A person initially entering regular full-time employment with a participating employer on or after July 1, 2011, shall:
 - (i) make an election to participate in the system created under this chapter:
 - (A) as a member for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System; or
 - (B) as a participant for defined contributions under the Tier II defined contribution plan established by Part 4, Tier II Defined Contribution Plan; and
 - (ii) electronically submit to the office notification of the member's election under Subsection (2)(b)(i) in a manner approved by the office.
 - (c) An election made by a person initially entering regular full-time employment with a participating employer under this Subsection (2) is irrevocable beginning one year from the date of eligibility for accrual of benefits.
 - (d) If no election is made under Subsection (2)(b)(i), the person shall become a member eligible for service credit and defined contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid Retirement System.
- (3) Notwithstanding the provisions of this section and except as provided in Subsection (4), an elected official initially entering office on or after July 1, 2011:
 - (a) is only eligible to participate in the Tier II defined contribution plan established under Part 4, Tier II Defined Contribution Plan;
 - (b) is not eligible to participate in the Tier II hybrid retirement system established under Part 3, Tier II Hybrid Retirement System; and
 - (c) is vested immediately in the elected official's benefit and the benefit is nonforfeitable, including the total amount contributed by the participating employer and the total amount contributed by the member in the Tier II defined contribution plan.
- (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected official initially entering office on or after July 1, 2011, who has service credit accrued before July 1, 2011:
 - (a) in a Tier I retirement system or plan administered by the board shall continue in the Tier I system or plan for which the legislator or full-time elected official is eligible; or
 - (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which the legislator or full-time elected official is eligible.

Amended by Chapter 227, 2016 General Session

49-22-202 Participation of employers -- Limitations -- Exclusions -- Admission requirements.

- (1) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.
- (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; or
 - (c) 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) If a participating employer purchases service credit on behalf of a regular full-time employee for service rendered prior to the participating employer's admission to this system, the participating employer:
 - (a) shall purchase credit 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; and
 - (b) shall comply with the provisions of Section 49-11-403.

Amended by Chapter 363, 2014 General Session

49-22-203 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), 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 employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
 - (e) 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); or
 - (f) a person who files a written request for exemption with the office under Section 49-22-205.
- (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) Upon cessation of the participating employer contributions, an employee under Subsection (1)
- (b) is eligible for service credit in this system.

Amended by Chapter 315, 2015 General Session

Amended by Chapter 364, 2015 General Session

49-22-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems.

- (1)
- (a) Regular full-time employees of institutions of higher education who are eligible to participate in either this system or in a retirement annuity contract with a public or private 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) 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.
- (3) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system may elect to continue participation in this system upon change to an employment classification which requires participation in a public or private system, organization, or company designated by the Board of Regents.
- (4) A regular full-time employee hired by an institution of higher education on or after July 1, 2011, whose employment classification requires participation in this system shall participate in this system.

Amended by Chapter 15, 2014 General Session

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 executive department head of the state;
 - (b) a member of the State Tax Commission;
 - (c) a member of the Public Service Commission;
 - (d) a member of a full-time or part-time board or commission;
 - (e) an employee of the Governor's Office of Management and Budget;
 - (f) an employee of the Governor's Office of Economic Development;
 - (g) an employee of the Commission on Criminal and Juvenile Justice;
 - (h) an employee of the Governor's Office;
 - (i) an employee of the State Auditor's Office;
 - (j) an employee of the State Treasurer's Office;
 - (k) any other member who is permitted to make an election under Section 49-11-406;
 - (l) 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;
 - (m) 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
 - (n) 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.

Amended by Chapter 227, 2016 General Session