

Part 4 Tier II Defined Contribution Plan

49-22-401 Contributions -- Rates.

- (1) Up to the amount allowed by federal law, the participating employer shall make a nonelective contribution of 10% of the participant's compensation to a defined contribution plan.
- (2)
 - (a) The participating employer shall contribute the 10% nonelective contribution described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code that:
 - (i) is sponsored by the board; and
 - (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.
 - (b) The member may make voluntary deferrals to:
 - (i) the qualified 401(k) plan that receives the employer contribution described in this Subsection (2); or
 - (ii) at the member's option, another defined contribution plan established by the participating employer.
 - (c) In addition to the percent specified under Subsection (2)(a), the participating employer shall pay the corresponding Tier I system amortization rate of the employee's compensation to the office to be applied to the employer's corresponding Tier I system liability.
- (3)
 - (a) Except as provided under Sections 49-22-503 and 49-23-504 and Subsection (3)(c), the total amount contributed by the participating employer under Subsection (2)(a) vests to the member upon accruing four years of employment as a regular full-time employee under this title.
 - (b) The total amount contributed by the member under Subsection (2)(b) vests to the member's benefit immediately and is nonforfeitable.
 - (c)
 - (i) Upon filing a written request for exemption with the office, an eligible employee is exempt from the vesting requirements of Subsection (3)(a) in accordance with Section 49-22-205.
 - (ii) An employee who is exempt under this Subsection (3)(c) is not eligible for additional service credit in the plan for the period of exempt employment.
 - (d)
 - (i) Years of employment under Subsection (3)(a) includes any fraction of a year to which the member may be entitled.
 - (ii) At the time of vesting, if a member's years of service credit is within one-tenth of one year of the total years required for vesting, the member shall be considered to have the total years of employment required for vesting.
- (4)
 - (a) Contributions made by a participating employer under Subsection (2)(a) shall be invested in a default option selected by the board until the member is vested in accordance with Subsection (3)(a).
 - (b) A member may direct the investment of contributions including associated investment gains and losses made by a participating employer under Subsection (2)(a) only after the contributions have vested in accordance with Subsection (3)(a).
 - (c) A member may direct the investment of contributions made by the member under Subsection (3)(b).

- (5) No loans shall be available from contributions made by a participating employer under Subsection (2)(a).
- (6) No hardship distributions shall be available from contributions made by a participating employer under Subsection (2)(a).
- (7)
 - (a) Except as provided in Subsection (7)(b), if a member terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a), all contributions made by a participating employer on behalf of the member including associated investment gains and losses under Subsection (2)(a) are subject to forfeiture.
 - (b) If a member who terminates employment with a participating employer prior to the vesting period described in Subsection (3)(a) subsequently enters employment with the same or another participating employer within 10 years of the termination date of the previous employment:
 - (i) all contributions made by the previous participating employer on behalf of the member including associated investment gains and losses shall be reinstated upon the member's employment as a regular full-time employee; and
 - (ii) the length of time that the member worked with the previous employer shall be included in determining whether the member has completed the vesting period under Subsection (3)(a).
 - (c) The office shall establish a forfeiture account and shall specify the uses of the forfeiture account, which may include an offset against administrative costs or employer contributions made under this section.
- (8) The office may request from any other plan under Subsection (2)(b)(ii) any relevant information pertaining to the maintenance of the plan's tax qualification under the Internal Revenue Code.
- (9) The office may take any action that in the office's judgment is necessary to maintain the tax-qualified status of the office's 401(k) defined contribution plan under federal law.

Amended by Chapter 64, 2025 General Session

49-22-402 Defined contribution distributions for members with a disability.

For a person with a disability who receives contributions under Subsection 49-11-404(4)(b), the member with a disability may begin receiving distributions from the defined contributions made by the participating employer on behalf of the member with a disability when the person would have been eligible to retire if the person was covered by the defined benefit portion of the Tier II hybrid retirement system under Part 3, Tier II Hybrid Retirement System.

Amended by Chapter 366, 2011 General Session

49-22-403 Eligibility to receive a retirement allowance for a benefit tied to a retirement date for defined contribution members.

- (1) As used in this section, "eligible to receive a retirement allowance" means the date selected by the member who is a participant under this part on which the member has ceased employment and would be qualified to receive an allowance under Section 49-22-304 if the member had been under the Tier II Hybrid Retirement System for the same period of employment.
- (2) The office and a participating employer shall make an accounting of years of service credit accrued for a member who is a participant under this part in order to calculate when a member would be eligible to receive a retirement allowance for purposes of establishing when a member may be eligible for a benefit tied to a retirement date that may be provided under Section 63A-17-508, this title, another state statute, or by a participating employer.

Amended by Chapter 345, 2021 General Session