

THE PUBLIC SCHOOL EMPLOYEES RETIREMENT ACT OF 1979 (EXCERPT)
Act 300 of 1980

ARTICLE 7

38.1420 Tier 2 plan; implementation.

Sec. 120. Notwithstanding any other provision of this act, the Tier 2 plan under this article will be implemented by the department as soon as administratively feasible but not later than January 1, 2011.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1421 Words and phrases in sections 122 to 124; date for implementation of Tier 2 plan.

Sec. 121. (1) For the purposes of this article, the words and phrases defined in sections 122 to 124 have the meanings ascribed to them in those sections.

(2) Notwithstanding any other provision of this act, the Tier 2 plan under this article shall be implemented by the department as soon as administratively feasible but not later than January 1, 2011.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1422 "Accumulated balance" and "compensation" defined.

Sec. 122. (1) "Accumulated balance" means the total balance in a qualified participant's, former qualified participant's, or refund beneficiary's individual account in Tier 2.

(2) "Compensation" means the remuneration paid a participant on account of the participant's services rendered to his or her employer equal to the sum of the following:

(a) A participant's W-2 earnings for services performed for the employer.

(b) Any amount contributed or deferred at the election of the participant which is excluded from gross income under section 125, 132(f)(4), 401(k), 403(b), or 457 of the internal revenue code, 26 USC 125, 132, 401, 403, and 457.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1423 "Employer" and "former qualified participant" defined.

Sec. 123. (1) "Employer" means a reporting unit.

(2) "Former qualified participant" means an individual who was a qualified participant and who terminates the employment upon which his or her participation is based for any reason.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1424 "Plan document," "qualified participant," "refund beneficiary," and "state treasurer" defined.

Sec. 124. (1) "Plan document" means the document that contains the provisions and procedures of Tier 2 in conformity with this act and the internal revenue code.

(2) "Qualified participant" means an individual who is a participant of Tier 2 and who is first employed and entered on the payroll of his or her employer on or after July 1, 2010, and who also was not employed by any employer before July 1, 2010, except that beginning on the effective date of the amendatory act that added section 42a, qualified participant does not include an individual employed by a reporting unit while enrolled as a student in that same reporting unit if the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2. However, an individual who, on the

effective date of the amendatory act that added section 42a, is a qualified participant and is employed by a reporting unit while enrolled as a student in that same reporting unit and the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2 will remain a qualified participant while employed and while enrolled as a student in that same reporting unit and the student's services in the employ of the reporting unit are excepted from employment as described in 26 CFR 31.3121(b)(10)-2 if the individual elects to remain a qualified participant. The retirement system shall determine a method of administering elections under this subsection.

(3) "Refund beneficiary" means an individual nominated by a qualified participant or a former qualified participant under section 134 to receive a distribution of the participant's accumulated balance in the manner prescribed in section 135.

(4) "State treasurer" means the treasurer of this state.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010;—Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012;—Am. 2018, Act 328, Imd. Eff. July 2, 2018.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides:

"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Enacting section 2 of Act 300 of 2012 provides:

"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

"(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

Popular name: Act 300

38.1425 Tier 2; department as fiduciary and trustee; appointment of advisory board; provisions and procedures; personnel and other services; adoption and compliance.

Sec. 125. (1) The department shall administer Tier 2 and shall be the fiduciary and trustee of Tier 2. The department may appoint an advisory board to assist the department in carrying out its duties as fiduciary and trustee. The department and the state treasurer shall comply with Executive Reorganization Order No. 1999-5, MCL 38.2721, in the administration of Tier 2.

(2) The department shall determine the provisions and procedures of Tier 2 and the plan document in conformity with this act and the internal revenue code.

(3) The department has the exclusive authority and responsibility to employ or contract with personnel and for services that the department determines necessary for the proper administration of and investment of assets of Tier 2, including, but not limited to, managerial, professional, legal, clerical, technical, and administrative personnel or services.

(4) Each employer shall be deemed to have adopted and shall comply with the provisions and procedures of Tier 2 and the plan document.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1426 Request for hearing; conduct under administrative procedures act of 1969.

Sec. 126. (1) A qualified participant, former qualified participant, or refund beneficiary may request a hearing on a claim involving his or her rights under Tier 2. Upon written request, the department shall provide for a hearing that shall be conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. An individual may be represented by counsel or other authorized agent at a hearing conducted under this section.

(2) Chapters 2, 3, and 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.224 to 24.264 and 24.291 to 24.292, do not apply to the establishment, implementation, administration, operation, investment, or distribution of Tier 2.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1427 Investment; direction by qualified participant, former qualified participant, and refund beneficiary; applicability of limitations; annuity options.

Sec. 127. (1) Each qualified participant, former qualified participant, and refund beneficiary shall direct the investment of the individual's accumulated employer and employee contributions and earnings to 1 or more investment choices within available categories of investment provided by the department. The limitations on the percentage of total assets for investments provided in the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1141, do not apply to Tier 2.

(2) In addition to the categories of investment provided by the department under subsection (1), the retirement system shall offer access to 1 or more fixed annuity options and 1 or more variable annuity options.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010;—Am. 2017, Act 92, Imd. Eff. July 13, 2017.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1428 Tier 2; administrative expenses.

Sec. 128. The administrative expenses of Tier 2 shall be paid by the qualified participants, former qualified participants, and refund beneficiaries who have not closed their accounts in a manner determined by the department.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1429 Participation in other public sector retirement benefits plan; "public sector employer" defined.

Sec. 129. A qualified participant shall not participate in any other public sector retirement benefits plan for simultaneous service rendered to the same public sector employer. Except as otherwise provided in this act or by the department, this section does not prohibit a qualified participant from participating in a retirement plan established by this state or other public sector employer under the internal revenue code. For the purposes of this section, "public sector employer" includes, but is not limited to, a reporting unit.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1431 Tier 2 account; contributions; additional contribution; additional matching contributions by employer.

Sec. 131. (1) This section is subject to the vesting requirements of section 132.

(2) Unless a qualified participant who is also a member of Tier 1 affirmatively elects not to contribute or elects to contribute a lesser amount, the qualified participant who is also a member of Tier 1 shall contribute 2% of his or her compensation to his or her Tier 2 account. The qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 50% of the first 2% of compensation contributed by the qualified participant under this subsection.

(3) A qualified participant may make contributions in addition to contributions made under subsection (2) to his or her Tier 2 account as permitted by the department and the internal revenue code.

(4) On the written determination of the director of the office of retirement services, an employee of an employer that is not a qualified participant may elect to make contributions to a Tier 2 account as permitted by the department and the internal revenue code. An employee as described in this subsection is treated as a qualified participant under this article for the limited purposes of his or her Tier 2 account.

(5) On the written determination of the director of the office of retirement services, an employer may annually elect to make additional matching contributions, including those in addition to matching contributions made under subsections (2) and (6), to an employee's Tier 2 account as permitted by the plan document and the internal revenue code. Matching contributions under this subsection must be made in amounts equal to 50% of the contributions made by the employee not to exceed the first 4% of contributions made in whole percentages only, for any employee in addition to amounts that are already matched under this

section, if any.

(6) Except as otherwise provided in section 81d, unless a qualified participant who is only a Tier 2 qualified participant due to an election made under section 81d(1) affirmatively elects not to contribute or elects to contribute a lesser amount, the qualified participant shall contribute 6% of his or her compensation to his or her Tier 2 account. Until January 31, 2018, the qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 50% of the first 6% of compensation contributed by the qualified participant under this subsection. Beginning February 1, 2018, the qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 100% of the first 3% of compensation contributed by the qualified participant under this subsection. Beginning February 1, 2018, all contributions made by an employer under this subsection must be paid by appropriation from the state school aid fund established by section 11 of article IX of the state constitution of 1963, assuming 100% participation by all qualified participants.

(7) For a qualified participant who is only a Tier 2 qualified participant under section 81d, beginning with the first available pay period after October 1, 2017, the qualified participant's employer shall make a contribution to the qualified participant's Tier 2 account in an amount equal to 4% of the qualified participant's compensation.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010;—Am. 2012, Act 300, Imd. Eff. Sept. 4, 2012;—Am. 2017, Act 92, Imd. Eff. July 13, 2017.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides:

"Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Enacting section 2 of Act 300 of 2012 provides:

"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

"(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

Popular name: Act 300

38.1431a Tier 2 accounts; terms and conditions.

Sec. 131a. Tier 2 accounts are subject to the following terms and conditions:

(a) On or before January 1, 2013, the retirement system shall design an automatic enrollment feature that provides that unless a qualified participant who makes contributions under this act elects to contribute a lesser amount, the qualified participant shall contribute the amount required to qualify for all eligible matching contributions under this act. The retirement system shall implement this automatic enrollment feature on or after January 1, 2013, as determined by the retirement system.

(b) Employer matching contributions do not have to be made to the same plan or account to which the elective employee contributions were contributed as the basis for the matching contributions.

(c) Elective employee contributions shall not be used as the basis for more than an equivalent amount of employer matching contributions or, in the case of matching contributions under section 131(2), 50% of the employer matching contributions.

(d) The retirement system shall design and implement a method to determine the proper allocation of employer matching contributions based on elective employee contributions as provided in this section.

History: Add. 2012, Act 300, Imd. Eff. Sept. 4, 2012;—Am. 2017, Act 92, Imd. Eff. July 13, 2017.

Compiler's note: Enacting section 2 of Act 300 of 2012 provides:

"Enacting section 2. (1) If the office of retirement services in the department of technology, management, and budget receives notification from the United States internal revenue service that any section or any portion of a section of this amendatory act will cause the retirement system to be disqualified for tax purposes under the internal revenue code, then the portion that will cause the disqualification does not apply.

"(2) The provisions of this amendatory act are severable. If any part of this amendatory act is declared invalid or unconstitutional, that declaration shall not affect the remaining part of this amendatory act."

Popular name: Act 300

38.1432 Vesting.

Sec. 132. A qualified participant is immediately 100% vested in his or her contributions made to Tier 2. A qualified participant shall vest in the employer contributions made on his or her behalf to Tier 2 according to the following schedule:

(a) Upon completion of 2 years of service, 50%.

(b) Upon completion of 3 years of service, 75%.

(c) Upon completion of 4 years of service, 100%.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1434 Refund beneficiary.

Sec. 134. A qualified participant or former qualified participant may nominate 1 or more individuals as a refund beneficiary by filing written notice of nomination with the department. If the qualified participant or former qualified participant is married at the time of the nomination and the participant's spouse is not the refund beneficiary for 100% of the account, the nomination is not effective unless the nomination is signed by the participant's spouse if the signature of the participant's spouse is required by the plan document. However, the department may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1435 Tier 2; eligibility to receive distribution; effect of death of qualified participant; methods of distribution.

Sec. 135. (1) A qualified participant is eligible to receive distribution of his or her accumulated balance in Tier 2 upon becoming a former qualified participant.

(2) Upon the death of a qualified participant or former qualified participant, the accumulated balance of that deceased participant is considered to belong to the refund beneficiary, if any, of that deceased participant. If a valid nomination of refund beneficiary is not on file with the department, the department, in a lump sum distribution, shall distribute the accumulated balance in accordance with the plan document.

(3) A former qualified participant or refund beneficiary may elect 1 or a combination of several of the following methods of distribution of the accumulated balance:

(a) A lump sum distribution to the recipient.

(b) A lump sum direct rollover to another qualified plan, to the extent allowed by federal law.

(c) Periodic distributions, as authorized by the department.

(d) No current distribution, in which case the accumulated balance shall remain in Tier 2 until the former qualified participant or refund beneficiary elects a method or methods of distribution under subdivisions (a) to (c), to the extent allowed by federal law.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

Popular name: Act 300

38.1437 Exemption from state, county, municipal, or local tax; right to setoff to recover overpayments.

Sec. 137. (1) Distributions from employer contributions made pursuant to section 131(2) and earnings on those employer contributions, and distributions from employee contributions made pursuant to section 131(2) and earnings on those employee contributions, are exempt from any state, county, municipal, or other local tax. Distributions from employer contributions made pursuant to section 131(2) and earnings on those employer contributions and distributions from employee contributions made pursuant to section 131(2) and earnings on those employee contributions are subject to the public employee retirement benefit protection act, 2002 PA 100, MCL 38.1681 to 38.1689.

(2) The department has the right of setoff to recover overpayments made under this act and to satisfy any claims arising from embezzlement or fraud committed by a qualified participant, former qualified participant, refund beneficiary, or other person who has a claim to a distribution or any other benefit from Tier 2.

(3) The department shall correct errors in the records and actions in Tier 2 under this act, and shall seek to recover overpayments and shall make up underpayments.

History: Add. 2010, Act 75, Imd. Eff. May 19, 2010.

Compiler's note: Enacting section 1 of Act 75 of 2010 provides: "Enacting section 1. If any section or part of a section of this act is for any reason held to be invalid or unconstitutional, the holding does not affect the validity of the remaining sections of this act or the act in its entirety."

in its entirety."

Popular name: Act 300

38.1451-38.1467 Repealed. 1997, Act 143, Imd. Eff. Nov. 19, 1997.

Compiler's note: The repealed sections pertained to termination of membership on Tier 1 and contributions to Tier 2 account.