

24 CAR § 10-329. Employer Participation – Employers of early childhood workers.

(a) A person who is employed as an early childhood worker may elect to become a member of the Arkansas Teacher Retirement System if:

(1)(A) The person is an employee of a childcare facility described in subdivision (a)(2) of this section and the person provides teaching, early childhood education, or supervision for one (1) or more children enrolled in the childcare facility.

(B) A person who elects to become a member of the system shall be a contributory member of the system and shall have his or her service credit computed in accordance with the laws and rules applicable to the system;

(2)(A) The childcare provider that employs the person:

(i) Is a childcare facility licensed and regulated under the Childcare Facility Licensing Act, Arkansas Code § 20-78-201 et seq.;

(ii) Is a childcare facility accredited by the Department of Education as an appropriate early childhood program as defined under Arkansas Code § 6-45-103;

(iii)(a) Receives state or federal childcare funding from the department under Arkansas Code § 6-87-101.

(b) A childcare provider that does not receive state or federal funding through the department does not meet the requirements of subdivision (a)(2)(A)(iii)(a) of this section;

(iv) Elects to participate in the system;

(v) Assumes responsibility for employer contributions;

(vi) Assumes responsibility for fees for obtaining Internal Revenue Service rulings or Employee Retirement Income Security Act of 1974 opinions;

(vii) Is approved by the pass-through fiscal agent as eligible for participation in the system; and

(viii) Agrees to reasonably cooperate with the pass-through fiscal agent for the purpose of:

(a) Remitting all required contributions and reports to the system; and

(b)(1) Retaining all records pertaining to the participation of a childcare provider in the system and pertaining to an early childhood worker who is employed by the childcare provider and elects to participate in the system.

(2) Records retained in accordance with subdivision (a)(2)(A)(viii)(b)(1) of this section shall be retained for at least seven (7) years from the effective date of a childcare provider's participation in the system or as otherwise advised in writing by the system.

(B) A childcare provider with an active subsidy or grant agreement with the department to provide childcare services to children may meet the requirements of subdivision (a)(2)(A)(iii) of this section even if the childcare provider does not currently have enrolled children whose childcare services are partially or wholly paid for through a subsidy or grant agreement with the department.

(C)(i) A childcare provider shall not be eligible for participation or continued participation in the system if the childcare provider fails to meet the requirements of subdivision (a)(2)(A)(i), (ii), or (iii) of this section or, if applicable, has their subsidy or grant agreement with the department terminated.

(ii)(a) An early childhood worker who is employed by a childcare provider that is not eligible for participation or continued participation in the system shall cease to be an active member of the system.

(b) Subdivision (a)(2)(C)(ii)(a) of this section shall not prevent an early childhood worker from becoming an active member of the system again if the early childhood worker is later employed by a childcare provider that meets the requirements of subdivision (a)(2)(A)(i) – (iii) of this section and, if applicable, has an active subsidy or grant agreement with the department.

(D) A childcare provider shall:

(i) Become a covered employer at the time that an employee elects to become or remain a member of the system; and

(ii) Be considered a covered employer only for each employee who elects to become a member of the system; and

(3) The Board of Trustees of the Arkansas Teacher Retirement System:

(A) Approves a single nonprofit fiscal agent to act as a pass-through fiscal agent to facilitate the voluntary participation of an early childhood worker in the system; and

(B) Determines as a general matter that the participation of early childhood workers who meet the requirements of subdivision (a)(1)(A) of this section will not:

(i) Impair the system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.;

(ii) Impair the system's governmental plan status under the Employee Retirement Income Security Act of 1974, 26 U.S.C. § 1001 et seq.;

(iii) Subject the system to additional federal requirements or otherwise impair any legal status of the system; or

(iv) Have a substantial adverse impact on the system's actuarial soundness.

(b) The Board of Trustees of the Arkansas Teacher Retirement System may approve a pass-through fiscal agent that agrees to:

(1) Implement an application process for childcare providers that:

(A) Ensures the childcare provider meets the requirements of subdivision (a)(2)(A) of this section; and

(B) Requires the childcare provider to submit for review by the pass-through fiscal agent an application that includes the following information:

(i) A proposed effective date for participation in the system;

(ii) A certified copy of the articles of incorporation, bylaws, and other organization documents of the childcare provider;

(iii)(a) A copy of the childcare provider's:

(1) Most recent three (3) years' annual audited financial statements, including balance sheets, financial statements, and statements of cash flows; or

(2) if the childcare provider does not have audited financial statements, the year-end compilation reports or internal balance sheets and income statements for the childcare provider;

(iv) A copy of the childcare provider's most recent three (3) years' federal and state income tax returns;

(v) Certification that the childcare provider has an active subsidy or grant agreement with the department;

(vi) A statement acknowledging that the childcare provider shall not be eligible for participation or continued participation in the system if their subsidy or grant agreement with the department is terminated;

(vii) A description of how the childcare provider's board of directors or board of trustees, if any, is selected and whether any governmental agency has input in the selection of the board members; and

(viii) A description of the types of services provided by the childcare provider;

(2)(A) Assume responsibility for approving childcare providers as eligible for participation in the system.

(B) The Board of Trustees of the Arkansas Teacher Retirement System, in its sole discretion, may deny the participation of a childcare provider approved by the pass-through fiscal agent as eligible for participation in the system;

(3)(A) Assume responsibility for approving for participation in the system only those childcare providers that will not jeopardize:

(i) The system's tax-qualified and governmental plan status under the Internal Revenue Code, 26 U.S.C. § 1 et seq.;

(ii) The system's governmental plan status under the Employee Retirement Income Security Act of 1974, 26 U.S.C. § 1001 et seq.; or

- (iii) Subject the system to additional federal requirements;
- (4) Assume responsibility for remitting contributions and submitting reports and any other documentation that the system requires an employer to provide to the system;
- (5) Assume responsibility for verifying with the department annually that each childcare provider approved for participation in the system is licensed, accredited, and has an active subsidy or grant agreement with the department;
- (6) Use reasonable and generally acceptable accounting standards to manage and account for contributions required from childcare providers;
- (7) Upon the request of the system, submit to the system financial records pertaining to the management and accounting of contributions required from childcare providers;
- (8)(A) Submit to the Executive Director of the Arkansas Teacher Retirement System reports providing concise explanations of the pass-through fiscal agent's determination finding a new or current childcare provider eligible for initial or continued participation in the system.
 - (B) Effective January 1, 2026, the reports required under subdivision (b)(8)(A) of this section shall be submitted at least on a quarterly basis or as otherwise directed by the executive director or his or her designee;
 - (9) Retain and reasonably ensure that a childcare provider retains all records pertaining to the participation of the childcare provider in the system for at least seven (7) years from the effective date of their participation in the system or as otherwise advised in writing by the system;
 - (10)(A) Retain and reasonably ensure that a childcare provider retains all records pertaining to an early childhood worker who is employed by the childcare provider and elects to participate in the system.
 - (B) Records retained in accordance with subdivision (b)(10)(A) of this section shall be retained for at least seven (7) years from the effective date of the childcare provider's participation in the system or as otherwise advised in writing by the system;
 - (11) Maintain a policy requiring any information pertaining to an early childhood worker who is employed by the childcare provider and who elects to participate in the system to be treated as confidential information and subject to disclosure in a manner that aligns with the laws, rules, and policies applicable to the system;
 - (12)(A) Ensure that at least every five (5) years from the effective start date of a childcare provider's participation in the system, the pass-through fiscal agent shall review the childcare provider's participation in the system to ensure that the childcare provider meets both federal and state requirements, including the provisions of the Arkansas Code § 24-7-212 and this section, for participation and continued participation in the system.
 - (B) The pass-through fiscal agent shall comply with subdivision (b)(12)(A) of this section by at a minimum:
 - (i) Verifying, by attestation of the childcare provider or other reasonably reliable means, that the childcare provider meets the requirements of subdivision (a)(2)(A)(i) – (iii) of this section; and
 - (ii) Obtaining and reviewing the childcare provider's:
 - (a) Most recent three (3) years' annual audited financial statements, including balance sheets, financial statements, and statements of cash flows; or
 - (b) If the childcare provider does not have audited financial statements, the year-end compilation reports or internal balance sheets and income statements for the employer;
 - (13) Certify that during the past five (5) years there have been no actions, proceedings, or investigations pending against the pass-through fiscal agent that may reasonably be expected to have a material adverse impact on the pass-through fiscal agent or that has resulted in the pass-through fiscal agent or its agents, employees, subsidiaries or affiliates being convicted or found civilly liable for a breach of fiduciary duty or financial crimes; and
 - (14) Promptly notify the system of any future actions, proceeding, or investigation involving the pass-through fiscal agent that meets the description of subdivision (b)(13) of this section.