

(1) The number of years used in the calculation of the deceased member's final average salary shall be three and the sum of the earnable salary for those years shall be divided by three if the member is described in division (A) or (B) of section 145.32 of the Revised Code or division (A), (B), or (E)(1), (3), or (4) of section 145.332 of the Revised Code.

(2) The number of years used in the calculation of the deceased member's final average salary shall be five and the sum of the earnable salary for those years shall be divided by five if the member is described in division (C) of section 145.32 of the Revised Code or division (C) or (E)(2) or (5) of section 145.332 of the Revised Code.

Sec. 145.036. On or before the last day of January of each year, each public employer shall transmit to the public employees retirement system a list of all individuals providing personal services who at any time during the preceding calendar year received compensation from the employer for which no contributions were deducted under section 145.47 of the Revised Code because the employer classified the individual as an independent contractor or another classification other than public employee or any other reason. The list shall contain the name of the individual and any other information required by the system.

If there is doubt at the time the list is compiled or at any other time regarding whether an individual providing personal services to a public employer is a public employee, the employer shall make a written request to the public employees retirement board for a determination of whether the individual is a public employee for the purposes of this chapter. On receipt of the request, the board shall determine whether the individual is a public employee with regard to the services in question. If the board determines that the individual is not a public employee, for the purposes of this chapter the individual shall be considered an independent contractor with regard to the services in question. The board's determination is final.

The board shall notify the individual and the employer of its determination. The determination shall apply to services performed before, on, or after the effective date of this section for the same employer in the same capacity.

Sec. 145.037. (A) As used in this section and section 145.038 of the Revised Code, "business entity" means an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business.

(B)(1) Except as provided in division (B)(2) of this section, an individual who provided personal services to a public employer on or before the effective date of this section but was not classified as a public employee

may request from the public employees retirement board a determination of whether the individual should have been classified as a public employee for purposes of this chapter. The request shall be made on a form provided by the board.

(2) Division (B)(1) of this section does not apply to an individual employed by a business entity under contract with a public employer to provide personal services to the employer.

(C) Not later than thirty days after the effective date of this section, the board shall notify each employer of the right of an individual described in division (B)(1) of this section to seek the determination described in that division. The notice shall be accompanied by copies of the form described in division (B)(1) of this section.

Not later than sixty days after the effective date of this section, the employer shall send to each individual described in division (B)(1) of this section a copy of the form provided by the retirement system and written notice of the right to seek a determination of whether the individual should have been classified as a public employee. The notice shall be sent to the individual's last known address on record with the employer.

On receipt of a properly completed form, the board shall determine whether the individual should have been classified as a public employee. If the board determines that the individual is not a public employee with regard to the services in question, for the purposes of this chapter the individual shall be considered an independent contractor with regard to the services in question. The board's determination is final.

The board shall notify the individual and the employer of its determination. The determination shall apply to services performed before, on, or after the effective date of this section for the same employer in the same capacity.

(D) Regardless of whether an individual actually receives notice under this section, the request for a determination must be made not later than one year after the effective date of this section unless the individual can demonstrate to the board's satisfaction through medical records that at the time the one-year period ended the individual was physically or mentally incapacitated and unable to request a determination.

Sec. 145.038. (A) A public employer who on or after the effective date of this section begins to receive personal services from an individual it classifies as an independent contractor or another classification other than public employee shall inform the individual of the classification and that no contributions will be made to the public employees retirement system. Not later than thirty days after the services begin, the employer shall require the