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PUBLIC PENSION REFORM: WHAT ARE THE OPTIONS?

JOHN D. WAHLIN

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LIMITATIONS ON MODIFYING PUBLIC EMPLOYEE PENSION BENEFITS

- A FEW STATES TREAT PENSION AS A GRATUITY WHICH CAN BE ABROGATED AT ANY TIME — CAN BE REVOKED AT ANY TIME

- SOME STATES FOLLOW ERISA RULE—ONLY BENEFITS WHICH HAVE ACCRUED ARE "VESTED" AND FUTURE ACCRUALS CAN BE REDUCED OR ELIMINATED

- THE VESTED PENSION RULE
  - IN MANY STATES THE RIGHT TO PENSION VESTS UPON EMPLOYMENT, INCLUDING ANY PENSION INCREASES DURING EMPLOYMENT
    - FEDERAL AND STATE CONSTITUTIONS GUARANTEE RIGHT TO PENSION UNDER CONTRACT CLAUSE
    - VESTED RIGHT TO A "SUBSTANTIAL OR REASONABLE" PENSION, NOT A FIXED OR SPECIFIC PENSION

(Continued on next slide)

- HOWEVER, COURTS HAVE REQUIRED ANY NEGATIVE CHANGE IN THE PENSION TO BE OFFSET BY A COMPARABLE POSITIVE CHANGE

- VESTED BENEFIT IN CALIFORNIA GENERALLY CANNOT BE BARGAINED AWAY

- RIGHT TO MAKE PROSPECTIVE CHANGES CAN BE RESERVED BY THE PUBLIC EMPLOYER

- RIGHT TO PENSION IS DISTINGUISHED FROM EMPLOYER'S RIGHT TO MODIFY CONDITIONS OF EMPLOYMENT, INCLUDING COMPENSATION

- WHO IS VESTED?
  - CURRENT RETIREES ARE VESTED IN THE SPECIFIC BENEFIT EARNED DURING EMPLOYMENT

- FUTURE HIRES
  - NO VESTING UNTIL HIRED—PENSION CAN BE CHANGED PROSPECTIVELY
  - LOWER BENEFIT THAN CURRENT EMPLOYEES IS ALLOWABLE
  - CHANGES MAY STILL BE SUBJECT OF BARGAINING

- CURRENT EMPLOYEES

  - ARE VESTED IN A SUBSTANTIAL AND REASONABLE PENSION

  - ARE NOT GUARANTEED, OR VESTED IN, A CERTAIN LEVEL OF COMPENSATION

WHAT ARE THE OPTIONS FOR CHANGE?

- PROSPECTIVE PLAN CHANGES FOR NEW HIRES
  - CAN GENERALLY REDUCE PENSION, BUT COST SAVINGS ARE MINIMAL
  - "HYBRID" ARRANGEMENT WITH LOWER, OR NO, DEFINED BENEFIT WITH NEW DEFINED CONTRIBUTION OPTION SUCH AS 457 MATCH

- CURRENT EMPLOYEES — ARE THERE ANY OPTIONS?
  - REDUCTION IN BENEFIT, UNLESS ACCOMPANIED BY COMPARABLE REPLACEMENT "BENEFIT," IS NOT PERMITTED
    - OFFSETTING CHANGES MUST OCCUR IN SAME YEAR — E.G. INCREASE IN FORMULA IN PRIOR YEAR CAN'T BE TAKEN INTO ACCOUNT IN A SUBSEQUENT YEAR REDUCTION
    - CHANGES IN CONDITIONS OF EMPLOYMENT
      - REDUCTION IN PAY OR DEFINITION OF PAY RESULTING IN LOWER PENSION

- CHANGE IN EMPLOYER AND/OR EMPLOYEE RATES OF CONTRIBUTION

  - REDUCTION IN EMPLOYER PICK-UP OF EMPLOYEE CONTRIBUTION (AS OPPOSED TO PLAN INCREASE IN DESIGNATED EMPLOYEE CONTRIBUTION)

  - EMPLOYEE PAYMENT OF EMPLOYER CONTRIBUTION — UNDER CALPERS "COST-SHARING"

- LOWERING OF MANDATORY RETIREMENT AGE
- INCREASE IN NORMAL RETIREMENT AGE
- ELIMINATION OF SUPPLEMENTAL PENSION FOR HIGH EARNERS

- CHANGE THROUGH UNDERFUNDING
  - LIABILITY TO PAY BENEFITS IS GENERAL OBLIGATION OF THE AGENCY AND BENEFIT CANNOT BE REDUCED DUE TO UNDERFUNDED STATUS OF PLAN
  - IS BANKRUPTCY AN OPTION?


Q&A

Contact Information



John D. Wahlin
john.wahlin@bbklaw.com
Best Best & Krieger LLP
3750 University Avenue, Suite 400
Riverside, CA 92501
Phone: 951-686-1450
Fax: 951-686-3083
Website: www.bbklaw.com