

LEGAL ISSUES SURROUNDING RETIREMENT



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COUNT ON MORE.

Introduction

- General overview of certain state laws that affect public employee retirement systems.
- Some laws may affect retirees, others may affect those contemplating retirement.
- General overview of relevant policies and ordinance sections.
- Frequently asked policy and ordinance questions.
- Presentation is not intended as a detailed legal analysis or a comprehensive list.



Michigan Constitution of 1963

Article I, Section 10:

No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

This provision has been interpreted by Michigan courts to generally prohibit the legislature from enacting a statute that would operate to strip away a vested contractual right.



Michigan Constitution of 1963, continued

Article 9, Section 24:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

This provision has been interpreted to protect persons covered by a state or local pension or retirement plan from having their benefits reduced by statute or ordinance.

Neither constitutional provision applies to retiree healthcare.



Exceptions to Constitutional Protections

- Agreement/consent as part of collective bargaining or litigation settlement.
- Creation of options or choices: Public Act 92 of 2017
 - Amends the Public School Employees Retirement Act;
 - Requires new hires after February 1, 2018, to choose between a DC (401K) plan or hybrid DB plan;
 - Sets hybrid plan rate of return and creates a floor for employer contribution;
 - Allows choice to remain so long as hybrid plan remains 85% funded.

Public Employee Retirement System Investment Act

- “Public Act 314” governs the investment of assets of all public employee retirement systems across the state.
- Generally, defines and limits the amount and type of investments that may be made by public employee retirement systems.
 - Real estate/fixed Income;
 - Domestic/international investments.
- Provides governance requirements and procedures for retirement system boards:
 - Fiduciary obligations;
 - Travel/education policy;
 - Annual reporting requirements.
- Mandates employer contribution.

Amendments to Public Act 314: 2014--2017

- Publish a summary annual report: website and state treasury;
 - Funding Informational Report for certain systems.
- Require adoption of annual budget;
- Use of system income to hire outside professionals;
- Addition of “pay to play” limitations;
- Modifications to investment categories.



Reciprocal Retirement Act (“RRA”)

- The City of Lansing has declared itself a reciprocal unit of government under the RRA.
- Generally, the RRA allows an eligible public employee to qualify for regular age and service retirement by combining years of service earned while employed in positions for different participating governmental units.
- Under the RRA, a transfer of service may be allowed which would consolidate a member's pension under the retirement system of the most recent reciprocal employer. After the transfer, the member would be treated as if the transferred service credit had been earned with the most recent reciprocal employer.
- The RAA cannot be used to qualify (vest) a person for health care, survivor or disability benefits.

Public Employees Relations Act (“PERA”)

- Provides the statutory framework to govern collective bargaining by public employees.
- PERA establishes the procedures for employees to select collective bargaining representatives, provides the structure for collective bargaining and the resolution of disputes, and declares certain activities to be unfair labor practices.
- The basic purpose of PERA is to regulate the ability of public employees to engage in collective bargaining activities.



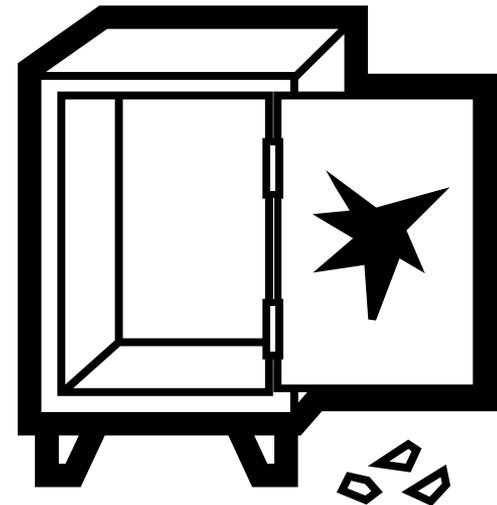
Public Employee Retirement Benefit Protection Act

- Generally, protects the retirement benefits (allowances) of a public employee from garnishment, attachment or assignment.
- Rights remain subject to forfeiture and domestic relations orders.



Public Employee Benefits Forfeiture Act

- Generally, provides for the forfeiture by court order of the retirement benefits of a public employee or retiree convicted of a felony “arising out of his or her service as a public employee.”
- May also have accumulated contributions and vested benefits become subject to forfeiture.



Policy & Ordinance-Service Credit Purchase

- Both P&F and ERS Systems have specific rules governing the purchasing of service credits or “air time.”
- Generally:
 - Must be a member of the system with specified years of service;
 - Must obtain an actuarial calculation from systems’ actuary;
 - Must sign/complete all necessary paperwork;
 - **Must complete all steps prior to leaving City employment.**

Policy and Ordinance—Disability Retirement

- Both P&F and ERS Systems have specific rules governing duty and non-duty disability retirement.
- Generally:
 - Must be a member of the system with specified years of service (non-duty);
 - Must apply to Boards' Disability Committee;
 - Must submit necessary paperwork and be evaluated by the systems' medical director—determine if meet “disability threshold” and if disability is duty or non-duty related;
 - Approval must come from the Board.
- Ordinance provisions and policies for periodic reexamination, income verification and investigation.

Policy and Ordinance-EDROS and DROS

- State laws govern instances where a member or retiree divorces.
- Both P&F and ERS Systems have specific rules governing “EDROS” and “DROS”.
- Policies provide for review and certification of orders.
- Template orders are provided to ensure consistency with retirement plan provisions.



Frequently Asked Ordinance Questions

Question No. 1: May a former member of the P&FS, who is either a retiree or in deferred retirement status from P&FS, and who is hired into a City job otherwise covered by the ERS, become a member of the ERS and vest for a pension after 8 years of service in the new job?

Answer No. 1: No. The ERS ordinance specifically prohibits a P&FS retiree or deferred retiree from ever becoming a member of the ERS. Thus, such an employee cannot accrue a pension in the ERS (Ordinance Section 292.14(b)(2) and (3))

As a corollary to this rule, the employee described in this example should not be required to make the employee contribution from payroll to the ERS retirement system.

F.A.Q., continued

Question No. 2: May a former member of the P&FS, who has terminated employment as a police officer or firefighter and in addition has either: (1) failed to vest for a deferred pension or (2) vested but has withdrawn all his or her accumulated contribution from the P&FS, and then hired into a City job covered by the ERS, become a member of the ERS and vest for pension benefits after 8 years of service in the new job?

Answer No. 2: Yes. See, Ordinance Section 292.14.



F.A.Q., continued

Question No. 3: May an ERS covered employee, who transfers from a job in one collective bargaining unit or City employee group into another ERS unit or group, count time in both jobs towards the eight year vesting requirement in ERS?

Answer No. 3: Yes, provided there is not a break in service between the jobs, or if there is a break in service, that the conditions in Ordinance Section 292.17(c) are met to restore the forfeited service credits (Section 292.20(a), Section 292.22, Section 292.15, Section 292.17(c) and Section 292.35(e)).

Upon vesting with a combined eight (8) years of ERS service, the pension attributable to each union or group will be calculated on the service credits earned in each job multiplied by the retirement factor applicable in that union or group for that service credited time (Section 292.21(a)(2)(4)).

F.A.Q., continued

Question No. 4: How long can accumulated contributions stay within the P&FS or the ERS unclaimed?

The response to this question depends on the status of the individual at the time he/she ceases to be a member of the P&FS or ERS:

A. If the individual is vested and leaves City employment (either voluntarily or by being laid-off), he/she may leave their accumulated contributions in the P&FS or ERS and defer retirement until they are eligible for the deferred pension. However, if a vested individual were to withdraw his/her accumulated contributions from either retirement system, he/she would no longer be eligible for deferred retirement (Section 294.02(k)(2), Section 292.22).

F.A.Q., continued

B. If the individual is not vested and ceases to be a member of the P&FS or the ERS, he/she may withdraw his/her accumulated contributions.

It is important to note that an individual that is not vested must withdraw their accumulated contribution within 5 years after the date he/she ceases to be a member of the P&FS or the ERS. A failure to withdraw the accumulated contributions within that 5 year period will result in the accumulated contributions being forfeited to the retirement system (Section 294.02(r)(2)(E), Section 292.35(f)).

F.A.Q., continued

Question No. 5: How are service credits affected when an employee who was a member of the P&FS or ERS terminates City employment (including being laid off) and is then rehired by the City to a position covered by the same retirement system that covered the individual before termination? This question assumes that the individual did not retire and commence pension payments when he/she was terminated.

Answer No. 5: If the period of time between the individual's separation from City employment and his/her rehire is more than 4 years, the employee, upon rehire, is treated as a new employee in his/her former retirement system for pension purposes, including eligibility and vesting.

F.A.Q., continued

If, however, the employee is re-employed within 4 years of the individual's original separation, the employee will be eligible to have the prior service credits restored on the condition that the employee either did not receive a payout of the employee's accumulated contribution from his/her prior employment or the employee repays the accumulated contribution, with interest, within the time permitted pursuant to the applicable ordinance provision (Section 294.02(g)(2), Sections 292.15 and 292.35(e)).



F.A.Q., Continued

Question No. 6: May a retiree modify a pension beneficiary designation based upon a divorce, remarriage or other reason?

Answer No. 6: No. Retirement Board policy prohibits any post-retirement modifications to a beneficiary designation. The policies are in place to: (1) preserve the vested rights of selected beneficiaries; (2) provide equal treatment to similarly situated persons; (3) avoid involvement in disputes arising from divorce or testate/intestate proceedings; and (4) comply with retirement plan provisions and applicable state law.



Questions?

