



## **Retiree Health Insurance Plans: Financial Help from the Federal Government and a Recent Court Decision**

In conjunction with the TRS “early” retirement option that permits teachers to retire between ages 55 and 60 without reducing their retirement annuity, many school districts offer a companion retiree health insurance program to encourage veteran teachers to retire as many as 10 years before age 65, when the employee becomes eligible for Medicare. These collectively bargained retiree health insurance plans offer subsidized or sometimes 100% health insurance coverage during the gap between retirement and eligibility for Medicare. While retirees are sometimes required to secure insurance through TRIP or a private insurance plan, many school districts have allowed retirees to continue participation in the school district’s group health plan.

As the cost of health insurance has exponentially increased in the last few years, however, many districts have begun rethinking the wisdom behind this model. While retirees make up a small percentage of the insurance pool, their claims can represent a majority of the insurance plan’s costs. As a result, some school districts are looking to end the retiree health insurance program all together or modify the program by shifting increased financial responsibility to the retirees.

### *Help from the Feds*

Recognizing that many employers can no longer afford to provide retiree health insurance plans, Congress recently enacted the *Patient Protection and Affordable Care Act* to preserve such plans and lessen the burden on employers. The legislation includes a temporary reinsurance program that will provide federal reimbursements to employer-funded early retiree health care plans for pre-Medicare retirees, between ages 55 and 64.

To be eligible for the program, employers must submit to the Secretary of Health and Human Services (“HHS”) a completed application, which is expected to be made available in June 2010. Although we have yet to see the application form, the legislation indicates that an applicant must demonstrate that its plan: (1) implements programs and procedures to generate cost-savings with respect to participants who have chronic and high-cost conditions; and (2) is able to provide documentation of the actual cost of the retiree medical claims. Both self-funded and insured plans are eligible. Once an employer’s application is approved by HHS, the employer must then submit a claim to HHS exhibiting the actual costs of the medical items or services received by each early retiree.

The reimbursement program is limited in scope and comes with some strings attached. Only costs incurred after June 23, 2010 are eligible for reimbursement and only 80% of the employer’s out of pocket cost will be reimbursed. Further, the reimbursed funds must be used to lower plan costs. This can include lowering premium costs for the employment-based plan or reducing the plan participants’ premium contributions, co-payments, deductibles, co-insurance or other out-of-pocket costs.

The program was appropriated \$5 billion and will expire when that money runs out or January 1, 2014, whichever occurs first. At least one consulting firm has suggested that the current appropriation will last less than one year, so swift action is appropriate. Accordingly, we are advising our clients to monitor the release of the program’s application from HHS and apply for participation at the earliest possible moment.

### *A Test Case*

The impact and success of the federal retiree insurance reimbursement program remains to be seen, and at least for now, is a temporary solution to skyrocketing retiree healthcare costs incurred by school districts. As a result,

school districts may be considering modifications to their current programs. Until recently, Illinois law did not address whether the employer school district, in an attempt to cut retiree health insurance costs, could modify a contract-based retiree health insurance plan after the employment relationship had ended, (*i.e.*, after the teacher retired) without breaching the contract that awarded the retirement benefit. In *Haake v. Board of Education of Glenbard Township School District 87*, a case handled by Scariano, Himes and Petrarca, the Illinois Appellate Court provided some guidance on the issue.

The teachers' contract at issue in *Haake* included a benefit that stated retirees would continue to receive health insurance coverage at the same cost as when they retired, *until they reached age 65*. Under the contract, teachers electing individual insurance coverage paid nothing toward their premiums, and those electing family coverage paid 50% of the premium. Years after the contract expired, and pursuant to a new contract bargained with the teachers' union, the board of education began charging retirees a small percentage of the plan's premium costs for individual participants -- the same rate that active teachers were required to pay. The retirees filed suit arguing that the insurance benefit lasted beyond the expiration of the contract, thus making the board's modification of the plan a breach of their agreement. The board of education argued that because the former contract had expired and had been replaced by a new agreement with the teachers' union, the retirees could not avail themselves of the former contract.

The court held that even though the contract granting the benefit had expired, because the retiree insurance provision had specific language addressing the duration of the benefit (until age 65), the board of education and teachers' union intended the benefit to outlast the contract's expiration and could not be modified by the board to the detriment of the current retirees. The *Haake* decision is unfavorable for school districts seeking to reduce retiree health insurance costs, but does not serve as an absolute bar to modifying such plans. While instructive, the decision is limited factually to particular language of the contract at issue in that case. Other contracts that do not similarly establish an independent duration for the retiree benefit may be subject to modification without similar risk of breach of contract action.

Scariano, Himes and Petrarca stands ready to assist your district with restructuring its retiree health insurance plan and participating in the federal reimbursement program.

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