Gmail [redacted]

Vested Rights-Public System Retirement Benefits
2 messages

Liwo, Jennifer N. [redacted] Wed, May 24, 2017 at 2:49 PM
To: "Rep. House - [redacted]
Cc: "Leonard, Joi L." [redacted]

Good Afternoon Representative House,

You requested cases and articles on how the Arkansas courts and federal courts address the issue of vested rights as it relates to retirement benefits offered by a public retirement system in Arkansas.

The approach or view of public retirement/pension benefits varies by state. The major theories through which states view retirement benefits are the gratuity theory, contractual theory, constitutional theory, promissory estoppel theory, and due process theory.

Based on my review of Arkansas case law, Arkansas appears to view retirement benefits as a contractual right if contributions are made to the system by the employee. Alternatively, if an employee does not contribute any funds to the system and the retirement benefit is funded entirely by the state, the benefit is considered a gratuitous allowance.

The contractual approach followed by Arkansas relies upon the Constitution of the United States, Article 1, § 10, which states, "No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility." and the Arkansas Constitution, Article 2, § 17, which states, "No bill of attainder, ex post facto law or law impairing the obligation of contracts shall ever be passed."

Arkansas follows a limited approach to vesting. Under this approach, if a member of a public retirement system makes contributions and, with the exception of the age requirement for retirement, meets all the other statutory eligibility requirements, the member's right to retirement benefits vests. The retirement benefits to which the member is entitled are those benefits specified by the statute in effect at the time the member's rights vested.

The most relevant Arkansas cases on the subject are:

- Pyle v. Webb, 253 Ark. 940, 489 S.W.2d 796 (1973)
- Jones v. Cheney, 253 Ark. 926, 489 S.W.2d 785 (1973)
- Ark. Tech Univ. v. Kink, 341 Ark. 495, 17 S.W.3d 809 (2000)
- Robinson. v. Taylor, 342 Ark. 459, 29 S.W.3d 691 (2000)

The above cited Arkansas Supreme Court opinions all discuss and rely upon Hickey v. Pittsburgh Pension Bd., 378 Pa. 300, 106 (1954), a case decided by the Pennsylvania Supreme Court.

As the federal government for the most part leaves the regulation of public retirement systems to the states, there wasn't any federal case law germane to your request. Law review and journal articles did not focus specifically on Arkansas, however, the following articles provide detailed information on the types of approaches taken with regard to retirement benefits and vested rights:

· Mark Casciari and Barbara Borowski, Going for Broke: Arizona's Legal Protection of Public Pension Benefits, 26 Benefits L.J., 1 (2013)

· Hayleigh S. Crawford, Rightsizing Public Employee Retirement Benefits: How Have the State Courts Resolved the Constitutional Issues?, 46 Ariz. St. L.J., 635 (2014)

· Anna K. Selby, Pensions in a Pinch: Why Texas Should Reconsider its Policies on Public Retirement Benefit Protection, 43 Texas Tech L. Rev., 1211 (2011)

The case law and law review articles are attached. Also attached is a chart obtained from the National Conference on Public Employee Retirement Systems' website that provides brief summaries of each state's protections for public sector retirement benefits. Please note that under the summary for Arkansas contained in the chart, Blackwood v. Floyd is incorrectly used as the title of the one of the cited cases. The case actually cited to is Robinson. v. Taylor, 342 Ark. 459, 29 S.W.3d 691 (2000).

If you have any follow-up questions or requests, please let me know.

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5 attachments

Case Law.pdf
932K

NCPERS Chart .pdf
87K

Casciari and Borowski - Benefits Law Journal.pdf
106K

Selby - Texas Tech Law Review.pdf
5972K

Crawford - Arizona St Law Journal.pdf
902K

Douglas House [redacted] Wed, May 24, 2017 at 3:57 PM
To: "Liwo, Jennifer N." [redacted]
Cc: "Leonard, Joi L." [redacted], Douglas House [redacted]

You are incredible! Thank you.

Sent from my iPhone

Important Changes in Pension Accounting and Financial Reporting

The Governmental Accounting Standards Board (GASB) approved new accounting and financial reported standards that affect public pension plans.

GASB accounting is not the same as actuarial funding

- GASB valuations and actuarial valuations are apples and oranges – developed for different purposes.
- Discount rate for projecting liabilities may be different if the GASB valuation's single equivalent interest rate is a blended rate.
- GASB uses the market value of assets at the System's year end, not smoothed (actuarial) value.
- Year-to-year GASB numbers can fluctuate dramatically, primarily due to investment returns.
- Actuarial valuations seek to provide more stable measures over time.

Accounting vs Funding

- All of these differences are a potential source of confusion for policy makers, media, and other interested parties
- GASB measures do not represent newly incurred liabilities – they offer a different way to view a plan's liabilities
- Having a "crossover date" does not mean a System will run out of money.
  - The single equivalent interest rate is figured using a "crossover" test, which is a type of cash flow analysis using artificial constraints established by GASB (such as assuming a closed group).
  - If assets are projected to be depleted under the GASB defined crossover test the single equivalent interest rate is a blended rate using the plan's actuarial investment return assumption and a municipal bond rate.
- Keep in mind that measures, like the GASB defined net pension liability (NPL) and actuarially defined unfunded actuarial liability (UAL) are not equivalent numbers that can be used interchangeably.
- Keep in mind GASB reporting is for a distinct purpose, accounting and financial statements
  - Not intended to provide a picture of the funded status of the System.
- The Governor and Legislature are ultimately responsible for deciding how best to provide sustainable funding for public employee pensions established by the State.

See **gasb.org** for background information, fact sheets, podcasts and other educational resources.

What Are GASB Standards?

The Governmental Accounting Standards Board (GASB) establishes standards to be used by governmental entities in their accounting practices and preparing financial statements. It is the official source of generally accepted accounting principles (GAAP) for state and local governments.

GASB does not establish funding standards for governmental retirement plans.

Who Is Affected?

Changes affect employers using GASB standards to produce their annual financial statements.

Key Terms

1. Total Pension Liability (TPL)
2. Single Equivalent Interest Rate (SEIR)
3. Fiduciary Net Position (FNP)
4. Net Pension Liability (NPL)

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