Hodges Loizzi Eisenhammer Rodick & Kohn LLP

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

EDUCATION EDITION

July 2013

Early Retirement Option ("ERO") Extension Bill Signed-- Under new Public Act 098-0042, the existing ERO option remains available on its current terms only through June 30, 2013.

To take advantage of the existing ERO, a TRS participant had to retire by June 30, 2013 (or January 1, 2014, in the case of a participant who filed a notice of intent to retire with his employer on or before June 30, 2013, and attains age 55 during the period July 1, 2013, to December 31, 2013).

The bill then extends the ERO to June 30, 2016, with two major changes. First, the contribution rates for both employees and employers increased. The one-time member payment increased to 14.4% (from 11.5%) of salary for every year the member is under age 60 or for every year the member's creditable service is less than 35 years, whichever is less. The one-time employer contribution increased to 29.3% (from 23.5%) of the member's salary for every year the member is under age 60.

Second, there is a new requirement that the participant's last employer

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Consumer Price Index

Percent change for the month of **May 2013,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	0.5	0.6
12 Mth	1.5	1.6
St. Louis, 2nd Half 2012		
6 Mth	0.8	0.6
12 Mth	2.2	2.1
U.S. Mthly	0.2	0.2
12 Mth	1.4	1.2

June CPI figures will be released July 14, 2013. For the most recent CPI, visit our website at: www.hlerk.com.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- Send in the attached form to receive the email edition of the *Extra Mile*. Please also use the form to let us know if your email address has changed for the upcoming school year or email anuzzo@hlerk.com with your email address.
- HLERK congratulates **Vanessa Clohessy** on her recent admission to the Bar of the Supreme Court of the United States.
- Enclosed please find a registration form for the IASA fall legal conferences, *The Year in Review: The Highlights and Lowlights of Illinois School Law 2013*.

U.S. Supreme Court Holds DOMA Unconstitutional/ Employee Benefits Issues Implicated--On June 26, 2013, the U.S. Supreme Court in *U.S. v. Windsor*, 2013 WL 3196928 (U.S.), held Section 3 of the federal *Defense of Marriage Act* ("DOMA") unconstitutional.

DOMA was enacted in 1996 and contains two main sections. Section 2, which was not at issue in the case, allows states to refuse to recognize same-sex marriages performed under the laws of other states.

Section 3, however, provides a definition for the term "marriage" and "spouse" by specifying that in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex, who is a husband or a wife.

While this definition did not prohibit states from enacting laws that permit same sex marriages or civil unions, DOMA's definitions impacted over 1,000 federal laws in which marital or spousal status is addressed. Thus, the practical meaning of

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ERO Cont. grant approval and certify eligibility for a retiree's participation in ERO, in accordance with criteria adopted by the employer with the mutual consent of the bargaining agent of a majority of the members employed by that employer. The law became effective June 28, 2013. For more information, access the link provided here:

http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1366&GAID=12&DocTypeID=SB&LegID=71900&SessionID=85&GA=98&SpecSess=0

Contact Barb Erickson or Heather Brickman with your ERO Inquiries.

DOMA Cont. the Court's decision appears to be that under federal law, a same sex marriage that is valid under state law will be recognized to the same extent as that of an opposite sex marriage.

There are, however, many questions that remain open regarding the impact of this decision on employers, including: (1) whether states that do not allow same sex marriage will have to recognize a same sex union from another state, and to what extent the federal status of that union will be recognized while residing in a state that does not allow same-sex marriage; (2) how and to what extent employee benefit plans such as pension, health and welfare and leave programs will need to change; and (3) whether and to what extent employers will need to alter withholding and tax reporting practices.

This landmark Supreme Court ruling potentially impacts school district employers in Illinois in a variety of ways.

Please contact Heather Brickman or Barb Erickson with your employee benefit inquiries.

Federal Appellate Court for Illinois Upholds District Decision to Place Student in Self-Contained Class--On April 26, 2013, the Seventh Circuit Court of Appeals (which governs all Illinois school districts in matters of special education law), upheld a federal district court ruling that the Milwaukee Public Schools did not violate IDEA by placing a ninth grade student with moderate cognitive impairments in a self-contained classroom after she failed to show improvement in a multi-categorical class.

In *D.W. ex rel. Williams v. Milwaukee Pub. Sch.,* 2013 WL 1785386 (7th Cir. Apr. 26, 2013), the district made various attempts to address the student's academic and behavioral problems, including one-to-one instruction, seating her near the teacher, modifying her behavior plan, modifying her assignments, and providing her with daily progress reports.

Because D.W. continued to receive poor grades and often refused to participate in class, her IEP team decided to place her in a self-contained class for the next school year. As a result of the IEP team's decision, the student's parents alleged that the district denied FAPE by placing D.W. in a more restrictive environment than necessary. D.W.'s parents pointed to the non-academic benefits provided by the multi-categorical class that would not be available in the self-contained class.

However, the Seventh Circuit reasoned that in order to challenge a placement decision, the parents must do more than show that the student is obtaining some benefit from mainstream classes. Instead, the court stated that the "relevant inquiry is whether the student's education in the mainstream environment was 'satisfactory' (or could be made satisfactory through reasonable measures)." Because the student's IEP team believed that D.W. could not learn satisfactorily in a multi-categorical class, the district did not deny FAPE by placing her in a self-contained classroom.

Contact Bennett Rodick or any of our special education practice group attorneys with your LRE or special education inquiries. We will see you at the ISBE Directors' Conference.

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