



Klausner & Kaufman
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

MEMORANDUM

TO: ALL FLORIDA PENSION PLANS

FROM: KLAUSNER & KAUFMAN, P.A.

RE: UPDATED GUIDANCE REGARDING SB 1128

DATE: JUNE 1, 2011

The purpose of this memo is to provide a continuing update regarding Senate Bill 1128 (hereinafter "SB 1128") which is currently awaiting signature by the Governor. Not to be confused with SB 2100 which amends the Florida Retirement System, SB 1128 applies to municipal and local retirement systems. In a memo from our office dated May 18, we summarized the primary provisions of SB 1128. This follow-up memo describes additional guidance about SB 1128 received this week from the Division of Retirement. Attached to this memo is an update from Trish Shoemaker at the Division of Retirement, along with emails between our office and Ms. Shoemaker.

In light of the July 1 effective date of SB 1128, our office has been flooded with calls about whether and how clients should interpret the new legislation. In particular, the treatment of accumulated and annual leave has been questioned:

As described in our May 18 memo, SB 1128 amends Sections 112.66, 175.032(3) and 185.02(4), Florida Statutes, to restrict the pensionable earnings used to calculate pension benefits. For non-collectively bargained service earned after July 1, 2011 and for service earned under a collectively bargained agreement ("CBA") entered into after July 1, 2011, only 300 hours of overtime may be treated as pensionable. Similarly, payments for accrued unused sick leave or annual leave earned after the effective may not be treated as pensionable earnings. For collectively bargained plans, these limitations will not apply until the first CBA entered into on or after July 1, 2011. In other words, these restrictions on accumulated leave and overtime do not take effect until the expiration of your current CBA.

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According to Ms. Shoemaker:

Where the members are represented by a collective bargaining agent (whether the CBA includes pension benefits or not) these provisions are effective on the date of entry into the first CBA entered into on or after July 1, 2011.

As has now been confirmed by the Division of Retirement, the leave and overtime provisions should be interpreted consistent with the Legislature's intent to avoid any diminution of accrued benefits. Moreover, any required plan amendments will not apply to members who are eligible for normal retirement on or before the applicable effective date of SB 1128.

According to Ms. Shoemaker:

Payments for overtime greater than 300 hours per year or accrued unused annual or sick leave accrued with service earned before the "effective date" may still be included in compensation for pension purposes, as provided in the plan document or CBA, even if the payment is not actually made until on or after the "effective date".

Boards will be able to use any reasonable and non-discriminatory methodology, consistent with the legislative intent of SB 1128, to protect accrued benefits pursuant to Article I, Section 10 of the Florida Constitution (the anti-impairment of contract provision).

In summary, SB 1128 does not change anything with regard to the treatment of accrued leave and sick leave earned prior to the effective date, and plans may continue to treat as pensionable accrued leave and sick leave earned prior to the effective date even if paid on or after July 1, 2011.

It thus follows that it is unnecessary for current employees to retire prior to July 1 to preserve the value of their accrued benefits under a local plan.

Please note that this memo is not exhaustive and should be read alongside our May 18 memo which provides a more detailed analysis of the primary provisions of SB 1128. Our office looks forward to discussing the new legislation at upcoming board meetings.

Enclosures

Adam Levinson

From: Shoemaker, Trish [Trish.Shoemaker@dms.myflorida.com]
Sent: Tuesday, May 31, 2011 9:47 AM
To: Adam Levinson; abieler@cypen.com; Robert Klausner; Bob Sugarman; Bonni S. Jensen; Ken Harrison; lee@cdpension.com; rcohen@roncohenlaw.com; scott@cdpension.com; Steve Cypen; Stuart Kaufman
Cc: Brinkman, Keith; Browning, Julie; Mitchell, Melody
Subject: RE: SB 1128

Good morning to all!

We concur with your comments in paragraphs 1 & 2, and while we are unable to give retirement advice to employees, SB 1128 does not change anything with regard to the treatment of AL and SL earned prior to the effective date, and plans may continue to treat as pensionable AL & SL earned prior to the effective date even if paid on or after July 1, 2011.

I checked this morning and I don't see where SB 1128 has been presented to the Governor yet, but it may be that the website has not been updated. You can check the website at: <http://www.flgov.com/bill-action/>.

I will be out of the office the rest of the week and returning on Tuesday, June 6. If you have any questions or need assistance you can contact Melody or Julie in the MPF office. If you have questions about the legislation, you are welcome to contact Keith Brinkman. His toll free phone number is (877) 738-5622.

Thank you for your cooperation and assistance.

Trish

Patricia F. Shoemaker
Benefits Administrator
Municipal Police Officers' and
Firefighters' Retirement Funds
Division of Retirement

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From: Adam Levinson [mailto:adam@robertdklausner.com]

Sent: Tuesday, May 31, 2011 6:53 AM

To: Shoemaker, Trish

Cc: abieler@cypen.com; Robert Klausner; Bob Sugarman; Bonni S. Jensen; Ken Harrison; lee@cdpension.com; rcohen@roncohenlaw.com; scott@cdpension.com; Steve Cypen; Stuart Kaufman; Adam Levinson

Subject: RE: SB 1128

Ms. Shoemaker,

We are in receipt of your emails of May 27 and agree with the points and observations you have described.

Given the time constraints we are working under, and on behalf of the attorneys listed below, we would add the following for your consideration:

1) Boards will be able to use any reasonable and non-discriminatory methodology, consistent with the legislative intent of SB 1128, to protect accrued benefits pursuant to Article I, Section 10 of the Florida Constitution (the anti-impairment of contract provision);

2) We would clarify the sixth paragraph of your email as follows:

“SB 1128 does not change anything with regard to the treatment of AL and SL earned prior to the effective date, and plans may continue to treat as pensionable AL & SL earned prior to the effective date even if paid on or after July 1, 2011.”

3) It thus follows that it is unnecessary for current employees to retire prior to July 1 to preserve the value of their accrued benefits under a local plan.

Respectfully,

Alison Bieler, Esq.

Ron Cohen, Esq.

Scott Christiansen, Esq.

Steve Cypen, Esq.

Lee Dehner, Esq.

Ken Harrison, Esq.

Bonni Jensen, Esq.

Stuart Kaufman, Esq.

Bob Klausner, Esq.

Adam Levinson, Esq.

From: Shoemaker, Trish [mailto:Trish.Shoemaker@dms.myflorida.com]

Sent: Friday, May 27, 2011 4:17 PM

To: Adam Levinson; abieler@cypen.com; Robert Klausner; Bob Sugarman; Bonni Jensen; Jim Loper; Ken Harrison; lee@cdpension.com; Mark Floyd; Matt Mierzwa; Paul Donnelly; Richard Sicking; rcohen@roncohenlaw.com; scott@cdpension.com; Steve Cypen; Stuart Kaufman

Subject: SB 1128

Hello all!

As of this afternoon SB 1128 has not been presented to the Governor. His website is <http://www.flgov.com/bill-action/> and you can check to see if it has been presented and when he takes action on the bill.

I know that you are getting a lot of calls, as we are, about the bill. I had hoped to have a brief outline of some of the major points available, but we are still working on that document. Though the bill has not yet become law...here are some comments that may be helpful....

The major questions seem to be about the effective date and how accumulated vacation and sick are to be treated.

If the plan members are not represented by a union, the effective date is July 1, 2011.

If the plan members are represented by union, these changes are effective upon the date of entering into the first new collective bargaining agreement on or after July 1, 2011. This is to be applied uniformly where you have union and non-union members in the same department...the effective date will be upon entering into the new CBA.

SB 1128 does not change anything with regard to the treatment of AL and SL earned prior to the effective date, and plans may continue to pay AL & SL earned prior to the effective date even if paid after July 1, 2011.

I will be in the office on Tuesday (we are closed on Monday), and then will be out of town the rest of the week. We hope to have the outline available on Tuesday, but if not, Keith will be available to answer your questions while I am gone.

Have a good weekend...God bless our troops!

Trish

Patricia F. Shoemaker
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Adam Levinson

From: Shoemaker, Trish [Trish.Shoemaker@dms.myflorida.com]
Sent: Tuesday, May 31, 2011 11:37 AM
To: Brad Armstrong; brad@foster-foster.com; Chad Little; Chuck Carr; Derek A. Scott; Don Dulaney; Doug Beckendorf; doug@foster-foster.com; Edmonds, Joseph; George Ling; Jason Franken; Jennifer Beattie; Jim Rizzo; john_lessl@aon.com; Jonathan Craven; Larry Wilson; Murray Cohen; patrick@foster-foster.com; Randall Stanley; Rocky Joyner; Sandra Heinrichs; Steve Palmquist; Theora Braccialarghe; Benefits USA, Inc.;Carolynn Furlong; Dustin Heintz; Paul Shamoun; Pete Prior; Scott Baur; Adam Levinson; abieler@cypen.com; Robert Klausner; Bob Sugarman; Bonni Jensen; Hal Johnson; Jim Linn; Jim Loper; jserota@wsh-law.com; Kelley Bosecker; Ken Harrison; lee@cdpension.com; Mark Floyd; Matt Mierzwa; Paul Donnelly; Richard Sicking; rcohen@roncohenlaw.com; scott@cdpension.com; Steve Cypen; Stuart Kaufman
Cc: David Murrell; matt@flpba.org; Lisa Henning ; Gary Rainey; toley@mindspring.com; Brinkman, Keith; Browning, Julie; Mitchell, Melody; Green, Garry
Subject: SB 1128
Attachments: Brief outline for notice re SB 1128.doc

Hello all!

As of this morning SB 1128 has not been presented to the Governor. Although the bill is not law, we know that many of you have questions about its impact on the local plans. Attached is an information sheet addressing some of the major concerns. Once the bill becomes law, this information will be updated on our website to show the Chapter number and a section-by-section analysis. A copy of this information sheet is posted on our website at: www.myflorida.com/frs/mpf.

Please feel free to share this information sheet with your clients.

Please contact let us know if you have any questions or if this office can be of assistance.

Sincerely,

Trish

Patricia F. Shoemaker
Benefits Administrator
Municipal Police Officers' and
Firefighters' Retirement Funds
Division of Retirement

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Senate Bill 1128 made several changes to all Florida's local government defined benefit retirement plans with amendments to chapter 112, as well as the Municipal Police Officers' and Firefighters' Retirement Trust Fund plans operating under chapters 175 and 185.

Though this bill has not yet become law, we know you have many questions and want to present information to help you understand these changes.

Listed below are the key changes made in this legislation:

Overtime, accrued vacation and sick leave payments for pension purposes

Change applies to: all local plans – Chapter 112

- For service earned on or after the "effective date" (July 1, 2011, for non-collectively bargained service; or the date of entry into the first collective bargaining agreement (CBA) entered into on or after July 1, 2011, for collectively bargained service), a defined benefit plan may include up to 300 hours per year of overtime compensation, as specified in the plan or CBA, but may not include any payments for accrued unused sick or annual leave in the retirement calculation.

Payments for overtime greater than 300 hours per year or accrued unused annual or sick leave accrued with service earned before the "effective date" may still be included in compensation for pension purposes, as provided in the plan document or CBA, even if the payment is not actually made until on or after the "effective date".

Plan sponsor contributions relating to normal cost

Change applies to: all local plans – Chapter 112

- Effective July 1, 2011, a local government sponsor of a defined benefit plan may not reduce contributions required to fund the normal cost of the plan. If the Actuarially Required Contribution is less than the normal cost, employer contributions must at least equal the normal cost.

This change in funding will require actuarial review and must be funded in accordance with chapter 60T-1.004(4), F.A.C. The minimum funding requirement must begin no later than the first day of the next fiscal year for the plan.

Overtime, accrued vacation and sick leave payments for pension purposes (175/185 specific)

Change applies to: local Police Officer and Firefighter pension plans – Chapters 175 & 185

- There are no changes to the definition of "compensation" or "salary" for service earned prior to the "effective date".

- Police Plans continue to require 300 hours of overtime in the retirement calculation as a minimum benefit. Fire Plans may include up to 300 hours.
- For service earned on or after the “effective date”, a Chapter 175 or 185 plan may include up to 300 hours per year of overtime compensation, as specified in the plan or CBA, but may not include any payments for accrued unused sick or annual leave in the retirement calculation.

Payments for overtime greater than 300 hours per year or accrued unused annual or sick leave accrued with service earned before the “effective date” may still be included in compensation for pension purposes, as provided in the plan document or CBA, even if the payment is not actually made until on or after the “effective date”.

Board of Trustees – makeup of the board of trustees

Change applies to: local Police Officer and Firefighter pension plans – Chapters 175 & 185

- This amendment only applies to those local law plans in effect on June 30, 1986 having a higher than 40% employee representation on the board. For these boards that were grandfathered in under the amendments in 1986, the City may now change the designated municipal representative on the board. Such municipal representatives must continue to be residents of the municipality. This change may not reduce the membership percentage of firefighters, police officers, or the municipal representatives on the board.

Employee Contribution increases

Change applies to: local Police Officer and Firefighter pension plans – Chapters 175 & 185

- As of the “effective date”, employee contributions may be increased by consent of the members’ collective bargaining unit, or if none, by majority consent of the police officers and firefighters. Increases in employee contributions are no longer contingent upon providing greater benefits.

Collectively Bargained Benefits & Non-collectively Bargained Benefits – Effective Date

Change applies to: all local plans – Chapter 112, 175 & 185

- Where the members are represented by a collective bargaining agent (whether the CBA includes pension benefits or not) these provisions are effective on the date of entry into the first CBA entered into on or after July 1, 2011.

- For Chapters 175 & 185 plans, if some of the police and firefighters are represented by a collective bargaining agent, then the effective date is the date of entry into the first CBA entered into on or after July 1, 2011 for all police and firefighters regardless of whether they are members of the collective bargaining unit or not.
- In cities/districts where the members are not represented by a collective bargaining agent, the effective date shall be July 1, 2011.

If you have questions regarding these changes, please call the Municipal Police Officers' and Firefighters' Retirement Fund Office at (850) 922-0667 or toll free (877) 738-6737.

May 31, 2011