

# *In Brief*

October 2011

## **PENSION REFORM: SWEEPING CHANGES TO IMRF**

As part of the on-going pension reform being tackled by the State of Illinois, the Illinois legislature recently passed and the Governor recently signed several items of legislation which affect a number of substantial changes to the Illinois Municipal Retirement Fund (IMRF). Public Act 97-0609, signed into law on August 26, 2011, contains the most significant changes. The new provisions become effective on January 1, 2012 and include:

- Cap on earnings increases in excess of 6% or 1.5% of the CPI-U<sup>1</sup>; Employer to pay an additional contribution (“Accelerated Payment”) for exceeding the cap.
- Employers must obtain a “Pension Impact Statement” before increasing the earnings of certain members by 12% or more.
- The 125% rule now applies to the last 24 months of the Final Rate of Earnings (FRE) period.
- Future Retired IMRF members who return to work in an IMRF covered position will have their pension payments suspended during the period of further employment.

Several other bills signed into law (P.A. 97-0272, P.A. 97-0273, P.A. 97-0319, and P.A. 97-0328) contain other, less significant changes to IMRF. This *In Brief* will explain the new provisions of the IMRF system and the impact to IMRF employers.

### **Accelerated Payments and the Cap on Earnings Increases**

The most significant change in the law for employers is the implementation of a cap on earnings and the

required Accelerated Payment for salary increases exceeding the cap.<sup>2</sup>

The earnings cap applies to any 12-month period of earnings used to calculate an employee’s (FRE) upon retirement. When an employee retires, IMRF will compare each 12 months’ earnings (from all IMRF-covered employers) within the FRE period to the previous year’s earnings with the same employer. If the earnings during the FRE period exceed the prior year’s earnings by *the greater of* 6% or 1.5 times the annual increase in the CPI-U (i.e. the earnings cap), the employer who paid those earnings must pay an Accelerated Payment to the IMRF.

The Accelerated Payment, calculated by IMRF and invoiced to employers, represents the present value of the increase in the employee’s pension as a result of the portion of the salary increase in excess of the cap. Although the Accelerated Payment is considered an additional employer pension contribution, the Accelerated Payments will be perceived more as a penalty to an employer for awarding a salary increase in excess of the statutory cap.

The earnings cap and Accelerated Payment only apply to earnings increases paid on or after January 1, 2012, to members retiring on or after February 1, 2012. Employers should also be aware that certain earnings are excluded from an employee’s FRE for purposes of determining whether the cap has been exceeded:

- Overtime or overload earnings

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<sup>1</sup> Consumer Price Index for Urban Consumers.

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<sup>2</sup> Similar salary caps were implemented for the Teachers’ Retirement System and State Universities Retirement System as early as 2005 (P.A. 94-0004 and 94-1057).

- Earnings increases due to a promotion resulting in increased responsibility and workload
- Earnings increases paid to members who are 10 years or more from retirement eligibility
- Increases resulting from an increase in hours required to be worked
- Earnings increases paid to individuals under contracts or collective bargaining agreements entered into, amended, or renewed before January 1, 2012<sup>3</sup>
- Increases paid under personnel policies adopted before January 1, 2012.

When an employer receives an Accelerated Payment invoice, the employer may dispute the payment if circumstances so warrant. If any of the above exceptions apply, the employer must provide evidence and supporting documents in order to claim an exemption from the Accelerated Payment. The evidence must be provided within 30-days of the invoice. Any invoice not paid in full within 90-days will accrue interest on the Accelerated Payment amount at the annual rate of 7.5%.

### The IMRF Pension Impact Statement

Under the new law, employers are required to obtain a "Pension Impact Statement" before increasing the earnings of certain members by 12% or more. When the governing body of the employer desires to increase the earnings of an officer, executive, or manager<sup>4</sup> by 12% or more, *before* such increase is effective, the employer must contact IMRF and request information as to the impact of that increase on pension benefits. IMRF must then respond with a written "Pension Impact Statement" stating the effect of the salary increase on the pension benefits of that member, including an estimated Accelerated Payment, as discussed above. The governing body

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<sup>3</sup> Increases are exempt from the Accelerated Payment calculation if the increase is paid pursuant to a CBA entered into, amended, or renewed before January 1, 2012, even if the payment is made *after* the expiration of the CBA. (For example, a retirement bonus given pursuant to the CBA for a retirement that occurs after the CBA expires, but for which notice was required to be given by the employee during the CBA, would be exempt.)

<sup>4</sup> Presently, the positions of "officer, executive or manager" are not defined in the law or clarified in IMRF guidance.

must then sign the Pension Impact Statement and pay the estimated Accelerated Payment associated with the earnings increase.

Pension Impact Statements are not required if salary increases are attributable to:

- Standard employment promotions resulting in increased responsibility and workload;
- Earnings increases paid to individuals under contracts or collective bargaining agreements entered into, amended, or renewed before January 1, 2012;
- Earnings increases paid to members who are 10 years or more from retirement eligibility; or
- Earnings increases resulting from an increase in the number of hours required to be worked.

Thus, any time a governing body of an employer plans to increase the earnings of an officer, executive, or manager by 12% or more, it is vital that the authorities contact IMRF *prior to* the increase becoming effective.

### Other Changes

Changes Affecting New IMRF Participants. Other changes to IMRF only apply to employees who *first* become an IMRF participant on or after January 1, 2012, thus establishing a second tier of benefits.

First, in computing the FRE for persons who first become participants in IMRF on or after January 1, 2012, the earnings to be considered for each of the final 24 months shall not exceed 125% of the highest earnings of any other month in the final earnings period.

A person who first becomes a member of IMRF (or any other State pension system) on or after January 1, 2012 and who is receiving a retirement annuity or pension under any State system or fund, may no longer accept a contractual position to provide services to the employer from which he or she retired unless that person's annuity or retirement pension is suspended during the contractual service.<sup>5</sup> The person receiving the annuity or retirement pension is now obligated to notify the pension fund or

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<sup>5</sup> An earlier revision to the Pension Code set the same requirement for individuals accepting full-time employment.

retirement system and his or her contractual employer of his or her retirement status. If a person fails to notify his employer or the pension fund or retirement system, he or she will be subject to criminal penalties and fines. P.A. 97-0609.

The 1000 Hour Standard. All non-education employers can now change their hourly standard to 1000 for newly hired employees, regardless of when the employer joined IMRF. Previously, a non-education employer could only do so if they joined IMRF prior to January 1, 1982. P.A. 97-0328.

Changes Affecting Retirees. IMRF members who retired prior to August 12, 2011, may return to work for an IMRF employer and may continue to receive their IMRF pension if the position requires less than the employer's hourly standard. If the position meets or exceeds the employer's hourly standard, the retiree's pension will be suspended during employment and the retiree will be required to again participate in IMRF. Once the member retires again, his or her pension will resume and will be recalculated to reflect the additional service credit. P.A. 97-0328.

Elected County Official (ECO) Plan Sunsets. As of August 8, 2011, unless a current elected county official has elected to participate in the ECO, he or she no longer has the option to do so. Members already participating in the ECO plan are not affected. P.A. 97-0272 and P.A. 97-0273.

New Posting Obligation for IMRF Employers. P.A. 97-0609 also amended the Open Meetings Act, now requiring IMRF Employers to post total compensation information for certain employees. See our *Law Alert* on this topic, dated September 21, 2011, available at [www.rsnlt.com](http://www.rsnlt.com).

If you have any questions about the requirements of the Pension Code, compliance with the new law, or this *In Brief*, please feel free to contact any RSNLT Employee Benefits attorney.

In addition, these new provisions will be discussed in detail at our up-coming Employee Benefits Conference (October 21<sup>st</sup>, Springfield and October 28<sup>th</sup>, Lisle). For more information please contact Meghann Eff at 312-332-7760 or [meff@rsnlt.com](mailto:meff@rsnlt.com).

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