

State Budget Bill Includes Significant Changes For Municipal Employers

June 30, 2011

Today, the Budget Bill (2011 Wisconsin Act 32) was published, which results in an effective date of July 1, 2011. Included in the Budget Bill are significant changes to the rights of public employees, especially for employees of police and fire departments. This *Legal Update* will provide a summary of these changes, and how they impact the changes already made under 2011 Wisconsin Act 10 (what was commonly known as the Budget Repair Bill). To avoid confusion in this *Legal Update* (we hope), we will use the term "Act 10" to describe the law now in effect and "the Budget Bill" to describe the amendments that were recently published and will be in effect.

IMPLEMENTATION DATE FOR EMPLOYEE CONTRIBUTIONS TO WRS

One of the most significant changes to Act 10 is the delay in the effective date of employee contributions to WRS. Under the Budget Bill, the WRS contributions required under Act 10 will begin on the first day of a pay period after a specific date, to be determined by the Secretary of the Department of Administration. Thus, under the Budget Bill, employees who are subject to the WRS contribution requirements (non-represented employees and those union employees with expired collective bargaining agreements) will not make these contributions until the Department of Administration declares the effective date for these contributions. This change only applies to those employers who are implementing WRS contributions directly as a result of Act 10. For those employers who have negotiated WRS contributions into their union contracts, or adopted personnel policies requiring employee contributions on a date certain, they should proceed with implementation of the date specified in the contract language or policy.

Based on this change in the implementation date of WRS contributions, there will be a gap between when Act 10 took effect (June 29, 2011) and the effective date of the WRS contributions as determined by the Department of Administration. We do not believe that the Legislature intended to create this gap or conflict in effective dates. We believe the legislative intent is clear; the amendments under the Budget Bill were meant to completely replace Act 10 and rescind the March 13, 2011 date specified in Act 10. Therefore, employers will most likely want to implement the employee contributions to WRS for eligible employees on the date as specified by the Department of Administration and not earlier, as specified in Act 10.

OTHER CHANGES TO WRS CONTRIBUTIONS AND/OR ELIGIBILITY

In addition to the new implementation date, the Budget Bill also makes several other significant changes to employee contributions to WRS and to those employees eligible for WRS benefits.

Pre-Tax Contributions: As part of the Budget Bill, the Legislature specifically revised the statute (§ 40.05(1)(b), Wis. Stats.) to provide that employee contributions to WRS will be made on a pre-tax basis by a reduction in salary. The Budget Bill describes the employee contributions as employer "pick-ups" under Internal Revenue Code Section 414(h)(2), which allows the deductions to be made on a pre-tax basis.

Thus, municipal employers need not pass a resolution authorizing the employee contributions to be deducted on a pre-tax basis (although there is no harm to those employers who have already passed such a resolution). A resolution should still be adopted if the employer intends to start WRS contributions, by contract language or policy, before the implementation date established under the Budget Bill.

Command Staff Exempt from WRS Contributions: Under the Budget Bill, the WRS contributions paid by non-represented supervisors in police, fire and sheriff departments are "aligned" with their

represented counterparts. Thus, non-represented command staff members are not required to make WRS contributions, and will not be required to do so, until the employer bargains these contribution rates with its police, fire or deputy sheriff unions.

Command Staff Exempt from Health Insurance Contributions: For those employers enrolled in the Wisconsin Public Employers' Group Health Insurance Plan (what is commonly known as the "State Plan"), the municipal employer must "align" health insurance contributions between command staff and public safety employees. In other words, the employer must make the same premium contributions for its non-represented supervisors as it does for bargaining unit members in police, fire and sheriff departments.

Newly Hired Public Safety Employees Must Make WRS Contributions: All newly hired public safety employees are required to make employee contributions to WRS. The effective date of this provision July 1, 2011. Thus, a police officer, firefighter/EMT or deputy sheriff (or other public safety employee) hired after the effective date of the Budget Bill must make mandatory WRS contributions, at the same contribution rate as general employees must pay (5.80% for 2011).

Transit Employees Exempted from WRS Contributions: Transit employees are subject to the same exemption from WRS contributions as public safety employees. Thus, transit employees will not make WRS contributions unless that obligation is bargained with the union representing transit workers.

Eligibility for WRS Coverage: The Budget Bill raises the minimum hours requirement for coverage under WRS. Any employee hired after July 1, 2011 must work at least two-thirds of what is considered full-time employment to be eligible for WRS enrollment. The Department of Employee Trust Funds (DETF) established 600 hours as the current threshold for WRS eligibility, so we anticipate this will increase to 1,200 hours; but DETF must establish the specific hours necessary to be eligible for WRS coverage.

BARGAINING RIGHTS FOR PUBLIC SAFETY EMPLOYEES

The Budget Bill makes several different changes to the bargaining rights of public safety employees.

Health Insurance Plan Design: The Budget Bill makes one very significant change to the bargaining rights of public safety employees (basically, police officers, firefighter/EMTs and deputy sheriffs). Under the new legislation, an employer is prohibited from bargaining over the "design and selection of health care coverage plans" for public safety employees, and the impact of the design and selection of the health care plan on the wages, hours and working conditions of public safety employees. This change takes effect at the expiration of the current collective bargaining agreement; which would mean July 1, 2011 for those collective bargaining agreements that are currently expired.

Employee Contributions to WRS: The Budget Bill makes WRS contribution rates a prohibited subject of bargaining for public safety employees, but for new hires only. In other words, the municipal employer must still bargain with the union over WRS contributions for current public safety employees. However, an employer is prohibited from bargaining over WRS contribution rates for public safety employees hired after the effective date of the Budget Bill. This language is consistent with the change to the WRS contribution requirements described above, which mandates that all newly hired public safety employees must pay the employee's share of WRS.

Interest Arbitration Factors: The Budget Bill also changes the factors which must be applied in interest arbitration cases involving public safety employees. The Budget Bill adds a new "greater weight" factor, which requires the arbitrator to consider local economic conditions for that municipality, and requires the arbitrator to give an accounting of this factor in the issuance of a decision.

BARGAINING RIGHTS FOR TRANSIT EMPLOYEES

The Budget Bill carves out an exception that retains bargaining rights for transit employees, similar to the exception provided for public safety employees. Thus, municipal employers must still bargain all terms of the collective bargaining agreement with their transit employees, must still submit to interest arbitration to resolve disputes, and must still deduct union dues or fair share from the paychecks of transit employees (even after contract expiration). Thus, transit employees will need to be in a separate bargaining unit from other types of general municipal employees. These changes were enacted to ensure that municipalities do not lose federal transit dollars.

BARGAINING RIGHTS FOR GENERAL MUNICIPAL EMPLOYEES

The Budget Bill made two small, but significant, changes to the language linking the wage increase to the Consumer Price Index (CPI-U). Under Act 10, an employer has a duty to bargain a wage increase with the union, but that wage increase is capped at the increase in the CPI. Act 10 also permitted the employer to negotiate a wage decrease if the CPI rate decreases. The Budget Bill clarifies that the link to the CPI is for represented employees only; in other words, an employer has flexibility in the wage increase it offers to non-represented employees and is not limited to the CPI increase. The Budget Bill also removed the language allowing an employer to decrease wages if the CPI decreases. The law now states that if there is a decrease or no change in the CPI, then the maximum an employer can offer in bargaining is a wage freeze.

POLICE & FIRE COMMISSION HEARINGS

The Budget Bill repeals the convoluted language that was passed in the last budget cycle which allowed police and fire unions to bargain language allowing disciplinary matters to be presented to an arbitrator rather than to the police and fire commission. The new law states that the employer and the union may agree in writing to have the police and fire commission continue to decide matters of discipline, or may have "any other appropriate agency serve as arbitrator or may designate any other competent, impartial and disinterested person to so serve." Thus, the parties must negotiate and jointly agree to use an arbitrator or other impartial person to decide matters of discipline in lieu of the police and fire commission.

UNION ELECTIONS

Act 10 requires that an election be held every year by the WERC to determine whether employees still wish to be represented by the union. Act 10 contained a requirement that the first vote by union members must occur in April 2011. The Budget Bill changes this date to require that the first certification election must be held within three (3) months of the effective date of the Budget Bill, which means on or before October 1, 2011.

MAINTENANCE OF EFFORT

The Budget Bill rescinds Wis. Stat. §79.07, the statute which required that municipalities maintain the same budget expenditures for emergency services in their police, fire or sheriff departments from the 2009 levels.

CONCLUSION

Both Act 10 and the Budget Bill make significant changes to the bargaining rights of public employees, as well as shifting the cost of some benefit programs to the employee. Absent further court litigation, it appears that employers now have additional methods and options to reduce labor costs and balance their budgets. Municipal employers face a significant amount of work as they transition many terms and conditions of employment from union contracts to personnel policies and employee handbooks.