

TAB 4

Law Offices

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MEMORANDUM

TO: PENSION BOARD CLIENTS

FROM: CHRISTIANSEN & DEHNER, P.A.

RE: SENATE BILL 1128: BENEFIT CALCULATION ISSUES - SUPPLEMENT

DATE: OCTOBER 12, 2011

Based on further guidance received from the State the following information is provided to supplement our August 22, 2011 memorandum.

Paragraph 6 of our August 22, 2011 memorandum provided:

6. **Example 5.** Assume the same as Example 4., above, but after he took the 100 hours of vacation to reduce his accrued time to 180 hours, he continued to work and earned another 40 hours of vacation time, thereby restoring his lump sum accrued vacation time to 220 hours. If he retired at this point, he still would only be able to receive pension credit for 180 hours of lump sum vacation time because the restoration of the accrued vacation time from its low of 180 hours is attributable to accruals after the effective date and therefore, cannot be counted for pension purposes.

The State has now indicated that it is permissible, but not mandatory, to set the amount of sick or annual leave accrued on the effective date as the maximum amount that can be used for pension purposes. Accordingly, the pension calculation can include the lesser of the amount of sick or annual leave time accrued on the effective date or the actual amount of sick or annual leave time for which the retiree receives payment at the time of retirement, regardless of whether the amount of sick or annual leave was at some time prior to retirement, reduced below the amount on the effective date.

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MEMORANDUM

TO: PENSION BOARD CLIENTS

FROM: CHRISTIANSEN & DEHNER, P.A.

RE: SENATE BILL 1128: BENEFIT CALCULATION ISSUES

DATE: AUGUST 22, 2011

Recently adopted Senate Bill 1128 amends Chapters 112, 175 and 185, Florida Statutes. Section 112.66(11), which is applicable to general employee, police and fire plans, now provides as follows:

“For non-collectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, when calculating retirement benefits, a defined benefits system or plan sponsored by a local government may include up to 300 hours per year of overtime compensation as specified in the plan or collective bargaining agreement, but may not include any accrued unused sick leave or annual leave. For those members whose terms and conditions of employment are collectively bargained, this Section is effective for the first agreement entered into on or after July 1, 2011 . . .”

Chapter 175, covering firefighters, has been amended to revise Section 175.032(3) to amend the definition of “salary” or “compensation” to read:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the fixed monthly remuneration paid a firefighter. If remuneration is based on actual services rendered, as in the case of a volunteer firefighter, the term means the total cash remuneration received yearly for such services, prorated on a monthly basis. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

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Chapter 185, covering police officers, has been amended to revise Section 185.02(4) to amend the definition of “salary” or “compensation” to read:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

Pursuant to its terms, Section 112.66(11) becomes effective on July 1, 2011 for those plans which do not have a collective bargaining agreement and on the effective date that a new bargaining agreement is entered into (when all parties sign) on or after July 1, 2011 for those that have a collective bargaining agreement. (“Effective Date”) Plans that do not currently include lump sum payments of sick and vacation time or overtime in the definition of “compensation” or “salary” are not affected by these changes.

While this change is effective on the applicable effective date even if the plan has not been amended, changes will have to be made to all affected police officer, firefighter and general employee pension plans in order to comply with the restrictions set forth in the above section. Additional issues arise with respect to the application of the rules regarding the calculation of lump sum payments of sick and vacation time in order to comply with the new restrictions. In order to deal with these issues, it will be necessary for the Board, the union (if applicable), and the City to agree on the means by which the above restrictions will be applied. We would recommend that the pension plan be amended to incorporate the procedures which have been agreed upon in order to comply with the new restrictions. We recommend that the following be considered:

1. First, we recommend that the Board ask the City to run a calculation of all sick and vacation time that each member of the pension plan has accrued as of the applicable effective date. Anyone who retires on or after the effective date and who receives lump sum payments of sick and vacation time which would otherwise be included for pension purposes as “salary” under the current definition, may receive pension credit for such sums, subject to the following considerations.
2. **Example 1.** An individual who has 200 hours of accrued vacation time (or sick time) as of the effective date and retires one month after the effective date after having accrued an additional five hours of vacation time and who has not used any additional vacation time during this subsequent month would be permitted to receive credit for the 200 hours of vacation time accrued as of the effective date, but would not be permitted to receive pension credit for the 5 hours accrued after the effective date.
3. **Example 2.** If an individual had 200 hours of vacation time as of the effective date and accrues another 80 hours of vacation time during the next year and then retires, he would again be permitted to receive pension credit for the 200 hours of vacation time accrued as of the effective date, but not for any additional accruals after that date.
4. **Example 3.** Assume the same as Example 2., above, but after having accrued the additional 80 hours, the member takes 40 hours of vacation during the subsequent year leaving him with 240 hours of accrued vacation time. In this example, the Board would have to consider whether the 40 hours which is actually used would deplete the accruals prior to the effective date, or deplete the accruals after the effective date. In other words, First-In First-Out (FIFO) or Last-In First-Out (LIFO). Either option is legally acceptable. Interpreting this provision in the most advantageous way for plan members would dictate using the LIFO method, which means that the 40 hours of vacation time used would be deducted from accruals after the effective date, and therefore, would not reduce the 200 hours of vacation accrued as of the effective date. **This methodology must be determined by the Board/City/Union.**
5. **Example 4.** Assume the same as Example 3., above, but instead of using 40 hours of vacation time, the member uses 100 hours of vacation time, so that his accrued vacation time is reduced to 180 hours. In this instance, if he retired at this point, the City would pay him for 180 hours of accrued vacation time and he would receive pension credit for only 180 hours.

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6. **Example 5.** Assume the same as Example 4., above, but after he took the 100 hours of vacation to reduce his accrued time to 180 hours, he continued to work and earned another 40 hours of vacation time, thereby restoring his lump sum accrued vacation time to 220 hours. If he retired at this point, he still would only be able to receive pension credit for 180 hours of lump sum vacation time because the restoration of the accrued vacation time from its low of 180 hours is attributable to accruals after the effective date and therefore, cannot be counted for pension purposes.
7. An additional decision needs to be made concerning the value of the lump sum sick and vacation time to be included for pension purposes at the time of retirement. Will the accumulated lump sum sick or vacation hours be valued at the hourly rate earned at the time of retirement, or at the hourly rate in effect on the effective date? Either option is legally acceptable. The position which would be most advantageous to the individual members would be to calculate the sick and vacation time based upon his rate of pay at the date of retirement, particularly since this is the actual amount which is received by the individual for the unused sick and vacation time. **This issue must also be determined by the Board of Trustees, the City and any union, so that we can establish a consistent basis for calculating retirement benefits.**
8. There may be other acceptable methods for handling these issues, such as freezing all or part of the accumulated sick/vacation time as of the effective date and not allowing this time to be used by the member until it is paid out in a lump sum at retirement, at which time pension credit will be given.
9. **With regard to the limitation on overtime, we need to determine whether we will apply the 300 hour annual limitation on a fiscal or calendar year basis. Either option is legally acceptable.** Also, we would recommend not including any hours treated as overtime pursuant to the Fair Labor Standards Act (FLSA) when calculating the 300 hours of includible overtime.

Once agreement is reached on the three benefit calculation issues above, we can prepare an ordinance to amend the plan to incorporate the new legislation and the three benefit calculation issues.