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**ILLINOIS COMMUNITY COLLEGE CHIEF FINANCIAL
OFFICERS
FALL CONFERENCE**

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**SURS LEGISLATIVE UPDATE AND BARGAINING UNDER THE
NEW 3% CREDITABLE EARNINGS THRESHOLD**

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PUBLIC PENSION CHANGES – 3% LIMITATION ON SALARY INCREASES

FY19 BUDGET IMPLEMENTATION BILL

- » Public Act 100-0587: Public Act 100-0587 was signed into law by Governor Rauner on June 4, 2018. The Act took effect that same day.
- » Retirement Incentive Limitations: Public Act 100-0587, which includes several cost saving provisions to balance the budget, decreases the level of permissible end of career salary increases from 6% to 3% for SURS and TRS member-employees.
- » Impact: Any annual increase in total reportable creditable earnings in excess of 3% during the period used to calculate an educational employee's retirement annuity (the "final rate of earnings" period) will cause employers to incur a penalty in the form of additional contribution payments to SURS.

FY19 BUDGET IMPLEMENTATION BILL

- » Applies to all creditable earnings increases, i.e., base salary and individual cells on the salary schedule; educational movement; off-schedule longevity movement; stipends; increases to cash options in lieu of taking health insurance; summer school payments; overload payments; etc.
- » **NOTE:** End of salary increases for IMRF employees are not affected by Public Act 100-0587.
- » **NOTE:** Salary increases for employees more than ten (10) years from retirement eligibility are not subject to 3% threshold.

FY19 BUDGET IMPLEMENTATION BILL

- » **WARNING:** Any language to restrict creditable earnings increases may be met with Age Discrimination in Employment Act claims, until this issue is finally decided by the federal courts.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

Question 1: When does the 3% limitation go into effect?

Answer: June 4, 2018.

- › The 3% limitation goes into effect “[f]or academic years beginning on or after July 1, 2018 and for earnings paid to a participant under a contract or collective bargaining agreement entered into, amended, or renewed on or after the effective date of this amendatory Act of the 100th General Assembly”.
- › Public Act 100-0587 went into effect on June 4, 2018. This means that any collective bargaining agreement or employment contract that is entered into, amended, or renewed on or after June 4, 2018 will be subject to the 3% limitation.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

Question 2: What is an employee's "final rate of earnings" ("FRE")?

Answer: An employee's FRE is the average salary used in the General Formula to calculate an employee's retirement annuity.

- › Tier 1: The four consecutive academic years of service with the highest average earnings, or the final 48 months of employment.
- › Tier 2: The eight consecutive academic years of service out of the last ten academic years of service with the highest average earnings, or the 96 consecutive months of earnings in the last 120 months of service having the highest average earnings.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

Question 3: Are there any circumstances where the 6% limitation still applies?

Answer: The 6% limitation still applies to the following:

- › Grandfathered CBAs and Contracts: Collective bargaining agreements and employment contracts entered into, amended, or renewed before June 4, 2018 are “grandfathered” under the 6% rule.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

Defining Grandfathered Status: SURS plans to consider a contract or collective bargaining agreement “grandfathered” if the contract or collective bargaining agreement was entered into, amended, or renewed on the earliest of the following:

- The date the employer’s governing body voted to accept the contract or the collective bargaining agreement;
- The date the contract or collective bargaining agreement was executed in final form by the parties; or
- The date the parties to the contract or collective bargaining agreement reached a tentative agreement regarding the terms of the contract or collective bargaining agreement, provided that the tentative agreement is subsequently approved by the governing body of the employer on or after June 4, 2018, without any changes affecting earnings or extending the expiration date of the contract.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

- › Maintaining Grandfathered Status: Contracts or collective bargaining agreements that are amended or renegotiated on or after June 4, 2018 in a manner that does not have the impact of increasing earnings during the FRE period or extending the expiration date of the contract will continue to remain grandfathered.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

Question 4: Is there a penalty for exceeding 3% increases during an employee's FRE period?

Answer: Yes.

- › The employer will receive a bill from SURS for the present value of the resulting increase in benefits attributable to any earnings increase in excess of 3%.
- › The employer will have 90 days to pay the bill without interest. Beginning on the 91st calendar day, the bill will accrue interest at the actuarially assumed rate of return on investment compounded annually. Effective June 30, 2018, the actuarially assumed rate of return on investment is 6.75%.

3% LIMITATION: FREQUENTLY ASKED QUESTIONS

Question 5: Is anyone exempt from the 3% limitation?

Answer: Yes.

- › The 3% limitation does not apply to SURS members whose retirement benefits are highest under the Money Purchase Formula.
- › The 3% limitation does not apply to SURS participants in the Self-Managed Plan.
- › More than 10 years from retirement.

Pending Legislation Affecting the 3% Limitation

Senate Bill 3622: The bill was filed on July 25, 2018 and was referred to Assignments that same day. As of September 11, 2018, no additional action has been taken on this bill.

Waiting to see if legislation may be introduced to re-establish any of the expired exceptions to the former 6% threshold.

BARGAINING CONSIDERATIONS UNDER THE 3% LIMITATION

» Table Trends and Strategies – Salary

- » Salary Schedule Elimination: A number of employers have negotiated the elimination of salary schedules to avoid the ongoing significant cost of salary schedule step movement and lane advancement. **This may also be a useful strategy for avoiding 3% penalties.**
- » Negotiate a fixed percentage or dollar increase to employees' current base salaries that factor in the cost of step movement.

BARGAINING CONSIDERATIONS UNDER THE 3% LIMITATION

- » Banding - Negotiate varying percentage or dollar increases based upon the employees' current step placement (e.g., steps 1-5: 3.5%, steps 6-10: 3.0%, Steps 11-15: 2.5%, steps 16-20: 2.0%, steps 20+: 1.5%). **This provides reduced increases for employees as they near retirement.**
- » Feathering – The percentage increase between steps on the salary schedule decrease as years of service increases.

BARGAINING CONSIDERATIONS UNDER THE 3% LIMITATION

- » Negotiate fixed dollar increases for employees' attainment of Master's Degree or each additional 15 credit hours of pre-approved graduate coursework. **Consider limiting educational movement during employees' first 15 years of service. Consider other alternatives to employees who would receive more than a 3% increase because of educational movement, i.e., tuition reimbursement.**

BARGAINING CONSIDERATIONS UNDER THE 3% LIMITATION

- » Modify Salary Step Increments: Even relatively minor reductions in step increment percentages (e.g., 2.50% → 2.25%) can significantly reduce the College's salary costs long-term.
- » Restructure Salary Lanes: By modifying salary lanes, Colleges can further reduce “built-in” schedule cost of salaries resulting from employees advancing horizontally on the salary schedule. **By paying for educational movement more frequently, the College may lessen the impact upon creditable earnings.**

BARGAINING CONSIDERATIONS UNDER THE 3% LIMITATION

- » Reduce Number of Salary Steps: Reducing the number of salary steps decreases the cost of vertical schedule advancement because employees are “frozen” and ineligible for additional step increases when they attain the highest step in a salary lane.

BARGAINING CONSIDERATIONS UNDER THE 3% LIMITATION

- » **Table Trends and Strategies – Health Insurance Contributions & Tuition Reimbursement**
- » Consider Board contribution increases to both as reasonable alternatives to increases in other areas constituting creditable earnings.

FAIR SHARE POST-*JANUS*

FAIR SHARE POST-JANUS

- » *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (June 27, 2018)
 - › Question Before the Court: May a public employee who does not join a union be compelled to pay a “fair share” fee to that union?
 - › Holding: No fair share fees may be deducted from a non-member’s wages unless the employee affirmatively consents to such payment.
 - › Rationale: Mandating non-union members to pay fair share fees without their affirmative consent violates the First Amendment.

FAIR SHARE POST-JANUS

- » *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (June 27, 2018)
 - › Impact: *Janus* invalidates fair share fees of non-union, bargaining-unit member public employees.
 - To comply with *Janus*, employers should verify which employees are paying fair share fees and immediately cease deducting fair share fees from their checks.
 - Union dues which the employer withholds and pays to the union on behalf of union members are **not** affected by the *Janus* decision.

JANUS: FREQUENTLY ASKED QUESTIONS

Question 1: If an employer currently has fair share employees, should the employer immediately cease deducting fair share fees from their checks?

Answer: Yes.

- › The employer must immediately cease taking fair share fees from a non-member employee's check unless and until the non-member employee executes a new consent to withhold union dues.
- › Consents to fair share fees executed prior to the *Janus* decision are not legally sufficient to authorize continued deductions.

JANUS: FREQUENTLY ASKED QUESTIONS

Question 2: Do employers need to notify employees about this ruling?

Answer: There is no duty to notify employees of the *Janus* ruling, and employers should proceed cautiously in directly communicating with employees regarding this decision.

- › We recommend employers attempt to discuss any proposed communications with employees about *Janus* with the union.
- › To avoid potential unfair labor practice claims, we recommend that the Board attorney review any statements to employees prior to issuance.

JANUS: FREQUENTLY ASKED QUESTIONS

Question 3: Does an employer need to notify the union of actions it will take in response to *Janus*?

Answer: We recommend notifying the union of the employer's plans in implementing the *Janus* decision. Doing so may help avoid complaints from the union that the employer took unilateral action in violation of the collective bargaining agreement or under relevant labor relations acts.

JANUS: FREQUENTLY ASKED QUESTIONS

Question 4: Do we need to reopen our existing contract related to fair share?

Answer: No.

- › *Janus* has ruled that withholding fair share fees without affirmative consent of a non-union employee is no longer authorized. The employer must follow the law and stop withholding fair share fees unless or until a post-*Janus* consent is obtained from the non-member employee.
- › Any fair share provision in the collective bargaining agreement which requires non-members to pay fair share fees without their affirmative consent is illegal and void because of the *Janus* decision.

JANUS: FREQUENTLY ASKED QUESTIONS

Question 5: Should an employer honor dues authorization forms that prohibit a member from revoking the authorization for a given period of time?

Answer: No. This type of authorization may be deemed to create an impermissible fair share status if the employee wants to leave the union before they are able to revoke the authorization. The problem is that *Janus* prohibits making an employee pay anything to the union if they do not want to be a member of the union.

This is expected to be an evolving area of the law and is something that labor attorneys will be monitoring for developments.

JANUS: FREQUENTLY ASKED QUESTIONS

Question 6: If a union member comes forward and advises the employer to stop withholding dues payments because he/she no longer wants to be in the union, should the employer comply?

Answer: Yes. Alternatively, an employer can place the withheld dues in a reserve account until the employee's status can be sorted out.

- › The employer should immediately notify the union of the employee's request.
- › Employers should advise unions that they will respond to these requests in this way.

PRESIDENT AND CHANCELLOR EMPLOYMENT CONTRACTS

Limitations on President Employment Contracts

- » Section 3-70 of the Illinois Community College Act: Employment Contract Transparency
 - › This law is effective January 1, 2017.
- » Contracts entered into, amended, or extended after January 1, 2017 with the president and chancellors must comply with the following requirements:
 - › Severance payments or contract buyouts may be placed in an escrow account if there are pending criminal charges against the president.
 - › Final action on the formation, renewal, extension, or termination of the employment contract must be made during an open meeting of the board.
 - › Public notice, in accordance with the OMA, must be given prior to final action on the formation, renewal, extension, or termination of the employment contract.
 - › Performance-based bonuses or incentive-based compensation must be approved by the board in an open meeting.
 - › Board minutes, board packets, and annual performance criteria and goals must be made available to the public on the community college's website.

Limitations on President Employment Contracts

- » Key Changes: Public notice must:
 - 1) be provided prior to final action on the “formation, renewal, extension, or termination” of any president’s employment contract; and
 - 2) include a copy of the board action item or other document describing the proposed “principal financial components” of the president’s employment contract.

- » “Principal financial components” include salary, insurance contributions, retirement benefits, housing or expense allowances, and other board-paid compensation and benefits.

Limitations on President Employment Contracts

- » Performance Bonus Payments: Performance based-bonus or incentive-based compensation payments must be publicly approved by the board.
 - › Performance goals and criteria to determine performance bonus must be made available to public at least 48 hours before board approval of bonus compensation.

Section 3-75 of the Illinois Community College Act: Executive Accountability

- » Each board must complete an annual performance review of the president and all chancellors of the community college.
- » Annual performance reviews must be considered when the board contemplates a bonus, raise, or severance agreement for the president or chancellor.

QUESTIONS?