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Options for Post-Employment Insurance Benefits

Controlling expenses while maintaining positive employment practices

The current fiscal environment in Wisconsin for public schools has put greater demands than ever on already tight budgets. Providing benefit compensation to active employees can be difficult, but the fiscal strains of providing benefits to retirees can remove a great deal of flexibility from already strained budgets. A trending question for many districts is, "Is it possible to get control of the post-retirement insurance expense while maintaining positive employment practices?"

The question is vital. Districts should examine their employment strategies; their district's benefit obligations for retirees; and begin the process of strategic planning towards gaining budget flexibility while remaining compliant with changing regulations.

When planning, the following issues must be considered:

1. **Legal:** Retiree benefits have a number of legal complications including pending federal non-discrimination issues.
2. **Employee rights:** Retirees can be bought out of vested benefits, but only on a voluntary basis.
3. **Time:** Any buyout or alternate accommodations of retiree health benefits have best results when accomplished with significant lead time.

Legal Compliance

Whatever solutions are considered to solve a potential post-retirement issue, they must comply with federal law. Some of the most noteworthy federal laws include:

- **Internal Revenue Code 105(h):** Non-discrimination regulations (currently only applied to self-funded group health plans, but pending for fully insured plans) prohibit discriminating in favor of highly compensated individuals as to plan eligibility and benefits. Essentially the law states that former employees who qualified under the legal definition of "highly compensated" (top 25 percent of earners) must receive the same benefit type/dollar limitations as all other employees. Similar regulations are expected to apply to fully insured plans in the future.
- **Types of monies:** Due to changes from the Affordable Care Act (ACA), redirecting salary dollars into Flexible Spending Accounts (FSA) for the express intent to pay for individual plan premiums (such as those available on the Public Exchanges) is prohibited. Providing a retiree-only Health Reimbursement Arrangement (HRA) continues to be a popular and effective option, but may be under more scrutiny by regulators as a result of the ACA and the movement toward eliminating tax-free methods for employers to provide assistance with health insurance premiums.
- **Understanding the Marketplace:** The public insurance exchanges do not allow individual purchasers to receive any premium subsidies or tax credits if they are eligible for health reimbursement arrangement benefits. This restriction significantly reduces the likelihood of those who would qualify for a subsidy based upon current income, moving off the district's plan and into an exchange-based policy.

These few examples demonstrate the complicated legal landscape that employers face when trying to find an equitable solution for their post-retirement health benefits issues.

Employee Rights

While the budget flexibility (and possibly needed legal relief from non-discrimination regulations) that can be gained from changes in post-employment health benefits is enticing, it is not an automatic change. If those retiree benefits are vested, they are generally a legally

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guaranteed benefit unless the individual in retirement agrees to changes. This can be problematic for those seeking budget relief as those vested may hold the benefits in high regard.

Whether the benefits are held in high esteem or not, an employer seeking to change a vested benefit should offer alternatives which would be seen as having enough value for accepting the optional financing of retiree benefits. Remember that in the case of vested benefits, the employee holds the option.

This means that alternate programs should be well thought out and explained so that those vested can determine whether they are worthy. Exploring options such as post-employment 403b payments and even cash buyouts may be worthwhile to consider although they may create tax implications for both the retiree and the district. The district's legal counsel should be consulted before such options are offered or implemented.

Timing

Making changes to increase flexibility can take planning and time. It's important to keep in mind that changes made today may not provide the greatest amount of short-term financial relief, but may be the best solution for all parties. You could have fully employed individuals who have already vested, and essentially own those previously negotiated post-retirement benefit rights.

As you move forward, if you are considering making long-term changes to post-retirement obligations, keep your budget and employee population in mind. Common solutions include:

- Ceasing to offer post-retirement benefits to new beneficiaries and providing "grandfathered" status for those who have already qualified.
- Creating a retiree-only HRA model for all future beneficiaries.
- Offering voluntary cash buyout of vested benefits for those with stated levels of benefits or years of service.
- Creating a tax-sheltered annuity (TSA) or a 403b plan.
- Creating a cash-only benefit for the retiree to purchase health benefits.

While timing is vital for making changes, you should also remember to seek expert legal, accounting and 403(b) advice when considering any of these arrangements.

Takeaway

In today's climate, it is not unusual for Wisconsin school districts to face a projected short- and long-term budgetary squeeze. There is little doubt that adjusting current and future post-retirement health benefits could relieve some of that fiscal pressure.

However, before making changes, your district should make sure those changes fit with your employment strategies, and consult with your benefit, accounting and legal advisors. Not doing so could be detrimental to your employment strategies while creating new potential legal and financial risk. ■

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The information presented in this article should not be construed as legal or tax advice. In all cases, employers should be advised to consult with their account or legal counsel or assistance.