IRS Is Considering Rule That Would Bar Public Employee Retirements Before Age 55

From The Las Vegas Review-Journal, September 22

CARSON CITY, NV – A major change proposed by the IRS for public pension plans, including Nevada's public employee retirement system, could eliminate early retirement pay for government employees in less than two years.

A new regulation the agency is pursuing would prohibit most public pension plans from allowing participants to retire and collect benefits earlier than age 55, with a preferred retirement age of 62. This would cover everyone from teachers to police to city and state workers in Nevada and across the country.

The Nevada Public Employees' Retirement System, for example, allows most participants to retire and receive benefits at any age after 30 years of service. Police and firefighters can retire even earlier.

The IRS regulation, which public pension systems have been fighting since it was first proposed, would end such a practice. The IRS has the ability to implement the rule because public pensions have tax deferral status given to them by the federal agency.

Labor unions and pension officials across the country, including Nevada, are fighting implementation of the rule. They are taking their case to Congress but are not sounding the alarm to their members just yet.

Others are welcoming the proposal as a modest but necessary reform.

A briefing paper on the proposed regulation prepared by officials with the city of Henderson says the impetus for the regulation is that the IRS believes a normal retirement age younger than 55 is not reasonable.

Workers covered under the Social Security program cannot receive full benefits now until they reach the age of 67.

The IRS regulation is set to take effect June 30, 2010, although a large number of national groups, from the Fraternal Order of Police to the National Education Association, asked in April for a delay in its implementation.

The IRS has not responded to the request, according to the Henderson briefing paper dated Aug. 11.

The state retirement system is questioning the new regulation as well.

Tina Leiss, operations officer for Nevada PERS, said the agency is waiting for more direction from the IRS on how this regulation would affect the Nevada retirement system before it reacts to the proposed regulation.

Employees in the state's retirement system are believed to have constitutional rights under the contracts clause to the benefits as they currently exist, she said. Any changes to the benefits for current participants could provoke lawsuits from employees or their associations, Leiss said.

"It's just not clear yet how this would affect any of the public pension plans," Leiss said.

The IRS regulation would apply to public pension plans such as PERS because they are tax qualified plans under the agency's regulations, she said. Such a designation provides tax benefits to participants who might otherwise have to pay taxes on their retirement contributions, Leiss said.

Dave Kallas, an official with the Las Vegas Police Protective Association, said he is fielding a number of calls from concerned police officers about the rule but suggested there is no immediate cause for alarm.

Public pension officials and other stakeholders are working with the IRS to come to an agreement on the issue, which was never intended to apply to public pensions in the first place, the union official said.

Kallas said it is his understanding that the legislation that prompted the IRS rule, a pension reform bill sponsored by Rep. Sam Johnson, R-Texas, was aimed at private pensions and not intended to apply to public pension plans.

"I'm not worrying about this issue quite yet," Kallas said. "We have to wait and see what transpires over the next few months."

Public awareness of the potential IRS change to the nation's public pension systems has come at the same time as calls for reforms to the plans.

A study released earlier this month by the Las Vegas Chamber of Commerce concludes that the government support of the public retirement system has become a drain on state and local government resources, leading to the underfunding of important programs such as education and transportation.

Hugh Anderson, vice president of the ABD&F Group at Merrill Lynch in Las Vegas and chairman of the chamber's government affairs committee, said the proposed IRS change is the right move.

A retirement age should better reflect today's demographic reality that people are living much longer, he said.

It is conceivable that a public employee could retire at age 55 with 30 years of service under today's rules and end up receiving retirement benefits for longer than the years worked, Anderson said.

"This whole demographic shift is here," he said. "It is no longer in the future. The baby boom generation is here and they are living a long time."

Withdrawals from personal retirement accounts are not permitted before age 59.5, so why should public employees be immediately entitled to retirement benefits at age 50 or 55, Anderson asked.

While there might be legitimate reasons why public pension rules should not be changed for those approaching retirement, ignoring the longevity issue puts the long-term viability of the public pensions at risk, he said.

A decision by the IRS to move forward could take the politically difficult decision out of the hands of elected officials, some of whom may be reluctant to implement such a reform, he said.

The development of the IRS regulation began about three years ago following passage of the pension reform legislation in Congress.

Those opposed to the new regulation are seeking help from Congress, circulating letters in both the House and Senate to get the IRS to hold off on the change.

Letters are also being sent to the Treasury secretary and the head of IRS suggesting the IRS overstepped its bounds and indicating that Congress never intended to give the agency such authority.

The Henderson memo states a public pension plan would completely comply with IRS regulations if the retirement age is set at 62.

But if a plan wants participants to receive benefits before they reach age 62, and no earlier than age 55, the plan administrator must prove to the IRS that such an age range is reasonably representative of the industry in which the covered workforce is employed.

A delay is being sought in the regulations in part because of concerns about the rights of those participating in the pension plans.

The memo states that when the Nevada Legislature made changes to the retirement system in 1989, a lawsuit arose and the state lost. The finding was that once an employee joins the PERS system, a contract is established and benefit levels, such as retirement after 30 years, cannot be taken away.

With the potential effective date of the IRS regulation nearly two years away, those now in public pension plans will have the opportunity to determine whether to pursue retirement to avoid the mandatory retirement age policy.

PERS has a $6.3 billion unfunded liability and $22 billion in assets. Nearly 104,000 state and local government workers and teachers and school staffers are PERS members.

An additional 37,000 retired workers are receiving benefits.

Contact Capital Bureau reporter Sean Whaley at swhaley@reviewjournal.com or 775-687-3900. proposed, would end such a practice. The IRS has the ability to implement the rule because public pensions have tax deferral status given to them by the federal agency.

Labor unions and pension officials across the country, including Nevada, are fighting implementation of the rule. They are taking their case to Congress but are not sounding the alarm to their members just yet.

Others are welcoming the proposal as a modest but necessary reform.

A briefing paper on the proposed regulation prepared by officials with the city of Henderson says the impetus for the regulation is that the IRS believes a normal retirement age younger than 55 is not reasonable.

Workers covered under the Social Security program cannot receive full benefits now until they reach the age of 67.

The IRS regulation is set to take effect June 30, 2010, although a large number of national groups, from the Fraternal Order of Police to the National Education Association, asked in April for a delay in its implementation.

The IRS has not responded to the request, according to the Henderson briefing paper dated Aug. 11.

The state retirement system is questioning the new regulation as well.

Tina Leiss, operations officer for Nevada PERS, said the agency is waiting for more direction from the IRS on how this regulation would affect the Nevada retirement system before it reacts to the proposed regulation.

Employees in the state's retirement system are believed to have constitutional rights under the contracts clause to the benefits as they currently exist, she said. Any changes to the benefits for current participants could provoke lawsuits from employees or their associations, Leiss said.

"It's just not clear yet how this would affect any of the public pension plans," Leiss said.

The IRS regulation would apply to public pension plans such as PERS because they are tax qualified plans under the agency's regulations, she said. Such a designation provides tax benefits to participants who might otherwise have to pay taxes on their retirement contributions, Leiss said.

Dave Kallas, an official with the Las Vegas Police Protective Association, said he is fielding a number of calls from concerned police officers about the rule but suggested there is no immediate cause for alarm.

Public pension officials and other stakeholders are working with the IRS to come to an agreement on the issue, which was never intended to apply to public pensions in the first place, the union official said.

Kallas said it is his understanding that the legislation that prompted the IRS rule, a pension reform bill sponsored by Rep. Sam Johnson, R-Texas, was aimed at private pensions and not intended to apply to public pension plans.

"I'm not worrying about this issue quite yet," Kallas said. "We have to wait and see what transpires over the next few months."

Public awareness of the potential IRS change to the nation's public pension systems has come at the same time as calls for reforms to the plans.

A study released earlier this month by the Las Vegas Chamber of Commerce concludes that the government support of the public retirement system has become a drain on state and local government resources, leading to the underfunding of important programs such as education and transportation.

Hugh Anderson, vice president of the ABD&F Group at Merrill Lynch in Las Vegas and chairman of the chamber's government affairs committee, said the proposed IRS change is the right move.

A retirement age should better reflect today's demographic reality that people are living much longer lives, he said.

It is conceivable that a public employee could retire at age 55 with 30 years of service under today's rules and end up receiving retirement benefits for longer than the years worked, Anderson said.

"This whole demographic shift is here," he said. "It is no longer in the future. The baby boom generation is here and they are living a long time."

Withdrawals from personal retirement accounts are not permitted before age 59.5, so why should public employees be immediately entitled to retirement benefits at age 50 or 55, Anderson asked.

While there might be legitimate reasons why public pension rules should not be changed for those approaching retirement, ignoring the longevity issue puts the long-term viability of the public pensions at risk, he said.

A decision by the IRS to move forward could take the politically difficult decision out of the hands of elected officials, some of whom may be reluctant to implement such a reform, he said.

The development of the IRS regulation began about three years ago following passage of the pension reform legislation in Congress.

Those opposed to the new regulation are seeking help from Congress, circulating letters in both the House and Senate to get the IRS to hold off on the change.

Letters are also being sent to the Treasury secretary and the head of IRS suggesting the IRS overstepped its bounds and indicating that Congress never intended to give the agency such authority.

The Henderson memo states a public pension plan would completely comply with IRS regulations if the retirement age is set at 62.

But if a plan wants participants to receive benefits before they reach age 62, and no earlier than age 55, the plan administrator must prove to the IRS that such an age range is reasonably representative of the industry in which the covered workforce is employed.

A delay is being sought in the regulations in part because of concerns about the rights of those participating in the pension plans.

The memo states that when the Nevada Legislature made changes to the retirement system in 1989, a lawsuit arose and the state lost. The finding was that once an employee joins the PERS system, a contract is established and benefit levels, such as retirement after 30 years, cannot be taken away.

With the potential effective date of the IRS regulation nearly two years away, those now in public pension plans will have the opportunity to determine whether to pursue retirement to avoid the mandatory retirement age policy.

PERS has a $6.3 billion unfunded liability and $22 billion in assets. Nearly 104,000 state and local government workers and teachers and school staff members are PERS members. Another 37,000 retired workers are receiving benefits.