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MI REPORT

INVIOLABLE — OR NOT

THE LEGAL STATUS OF RETIREE MEDICAL BENEFITS FOR STATE AND LOCAL EMPLOYEES

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Executive Summary

Many U.S. jurisdictions are exploring the possibility of reducing or eliminating retiree medical coverage. In general, the interest in reducing retiree medical benefits is driven by cost: benefits for retired public-sector employees are one of the most important contributors to the long-term fiscal imbalances of state and local governments and are estimated to equal more than $1 trillion—or nearly a third of all state and local government revenue. When employers eliminate or reduce retiree medical benefits, such actions typically face legal challenges. This paper examines the legal framework and protections that apply to state and local government retiree medical benefits to help stakeholders better understand the extent of legal rights to such benefits.

The paper finds that the protection of retiree medical benefits varies significantly by state and circumstance. Employees who are covered by a collective bargaining agreement that grants retiree medical benefits typically have greater legal protection against benefit changes, compared with employees who must establish legal protection through nontraditional contract forms, such as those arising from legislation or employee handbooks. Yet even where a collective bargaining agreement is in place, much depends on the exact language in the contract regarding the duration over which benefits must be provided and whether the employer is permitted to make changes to the substance of such coverage.

Of the ten states reviewed herein, three—Illinois, New York, and Pennsylvania—provide significant protection for retiree medical benefits, either through explicit statutory provisions or through case law suggesting that retiree benefits vest for life in the absence of explicit language to the contrary. Five states—California, Connecticut, Michigan, New Jersey, and Texas—provide a moderate level of protection, with the specifics varying significantly from case to case; however, of these five, appellate courts in two (California and Michigan) have held that where the contract language is silent as to the duration of retiree medical benefits, the right to such benefits terminates at the same time as the collective bargaining agreement. And two states—Alabama and Ohio—lack sufficient legal precedent to make any generalizations regarding the legal approach typically used.

All this suggests that more precise contract language could prevent many retiree medical legal disputes: collective bargaining agreements providing for retiree medical benefits should specifically state the duration of such benefits, the substance of the coverage to be provided, and the ability, if any, of the employer to make changes to the cost-sharing provisions of such coverage. And outside the collective bargaining context, employers should clearly communicate whether the benefits should be considered contractual.

INVIOLABLE — OR NOT

THE LEGAL STATUS OF RETIREE MEDICAL BENEFITS FOR STATE AND LOCAL EMPLOYEES

I. Introduction

Benefits for retired employees are one of the most important contributors to the long-term fiscal imbalances of U.S. state and local governments. While traditional pension benefits account for a significant portion of those costs, many state and local governments also offer medical benefits to retirees. The cost of providing such benefits is estimated to equal more than $1 trillion—or nearly a third of all state and local government revenue.[1] Few cities and states have set aside money to pay such benefits, instead paying the costs as they become due out of current cash flow.

At age 65, the vast majority of Americans qualify for health insurance coverage through Medicare. Nevertheless, employer-provided retiree medical benefits, particularly for public-sector employees, are a commonly offered fringe benefit. Such benefits remain popular within the public sector, despite widely available Medicare coverage, for three reasons. First, Medicare offers incomplete coverage, with high cost-sharing. As a result, most Medicare beneficiaries must purchase supplemental ("Medigap") coverage to fill the gaps in their Medicare coverage. Employer-provided retiree health insurance offers retirees an easy way to supplement their Medicare coverage.

Second, many public-safety employees retire before age 65 and, therefore, may have several years in retirement where they are not yet eligible for Medicare. For these employees, employer-provided coverage after retirement may be the most affordable method of obtaining coverage. Third, some public employees are not eligible for Medicare: public employees who were hired before March 31, 1986, by governments that elected not to participate in Social Security—and who have since been continuously employed by such employers—are not Medicare-eligible unless they gained such eligibility through a spouse's employment.

While the type and extent of retiree medical coverage varies tremendously across America's public sector, a common structure provides continued coverage under the active-employee health plan for individuals who retire early until they reach age 65. Once an employee turns

65, some employers cease offering group coverage but will reimburse some, or all, of the employee's Medicare premiums. Other employers allow retirees to stay on the group plan after 65, with such plans providing coverage supplemental to Medicare. And some employers cease all coverage when an employee turns 65, providing retiree medical coverage only as a bridge to Medicare.

Many U.S. jurisdictions are currently exploring the possibility of reducing or eliminating retiree medical coverage. Where retiree medical costs are unfunded and very high, there is significant concern that such costs will crowd out essential governmental services. Further, in 2015, the Governmental Accounting Standards Board (GASB) adopted new reporting requirements for retiree medical obligations, mandating that state and local governments list net retiree medical benefit liability on the government's balance sheet, not in a note disclosure.[2] When a similar change was made in the private sector, many employers chose to eliminate retiree medical benefits rather than report the liability. State and local governments may follow suit and, henceforth, more closely scrutinize retiree medical costs.[3]

For these reasons, many public employees—particularly in financially stressed jurisdictions—worry about the future security of their retiree medical benefits. Such benefits are often an important part of their compensation packages and can affect employees' decisions on where to work and for how long. Retiree medical benefits are often of particular importance for those employees who work in law enforcement or firefighting and are required, under state law, to retire before age 65. For employees to make rational employment decisions, they should be fully informed of the legal security of their retiree medical benefits.

This paper examines whether retiree medical benefits can be reduced or eliminated at the discretion of state and local governments. The paper finds that the protection of retiree medical benefits—while generally less protected than traditional pension benefits—varies significantly by state and circumstance. Employees who are covered by a collective bargaining agreement that grants retiree medical benefits typically have greater legal protection against benefit changes, compared with employees who must establish legal protection through nontraditional contract forms, such as those arising from legislation or employee handbooks. Yet even where a collective bargaining agreement is in place, much depends on the exact language in the contract regarding the duration over which benefits must be provided and whether the employer is permitted to make changes to the substance of such coverage.

Of the ten states reviewed herein[4] (**Figure**), three—Illinois, New York, and Pennsylvania—provide a significant level of protection for retiree medical benefits, through explicit statutory law or through case law holding that retiree benefits are presumed to vest for life in the absence of explicit language to the contrary. Five states—California, Connecticut, Michigan, New Jersey, and Texas—provide a moderate level of protection, with the specifics varying significantly from case to case; however, of these five, appellate courts in two (California and Michigan) have held that where the contract language is silent as to the duration of retiree medical benefits, the right to such benefits terminates at the same time as the collective bargaining agreement. And two states—Alabama and Ohio—lack sufficient legal precedent to make any generalizations regarding the legal approach typically used.

Legal Protection for Retiree Medical Benefits, Select States

State	Level of Protection	Collective Bargaining?
Alabama	Unknown	No
California	Moderate	Yes
Connecticut	Moderate	Yes
Illinois	Significant	Yes
Michigan	Moderate	Yes*
New Jersey	Moderate	Yes
New York	Significant	Yes
Ohio	Unknown	Yes
Pennsylvania	Significant	Yes
Texas	Moderate	No

*Michigan law allows financially distressed local governments to have the governor appoint an emergency manager to address the government's financial emergency. Pursuant to statute, an emergency manager has broad powers to address the financial emergency, including the ability to "reject, modify, or terminate" one or more provisions of a collective bargaining agreement.[5]
Source: Author's analysis

II. Legal Rights to Retiree Medical Benefits

On What Basis Are Retiree Medical Benefits Entitled to Legal Protection?

In general, fringe benefits offered to any employee, public or private, may be amended by the employer at any time and for any reason. An employer is prohibited from making changes only where relevant statutory law precludes such changes or where the employer has entered into a contract with employees regarding such benefits. As a result, any legal analysis of the rights to retiree medical benefits must begin by establishing the basis for the legal protection.

If no statutory law bars changes, one must examine the specific facts and circumstances to determine if a contract has been formed between the employer and employee regarding such benefits. If a contract does exist, its terms must be examined to determine the duration during which such benefits must be provided and what changes, if any, the employer may make to the substance of such benefits. Changes to the substance of coverage include changing insurance plans, increasing the employee's share of the premium, and raising cost-sharing features, such as deductibles or co-pays.

Why Are Retiree Medical Benefits Treated Differently from Pension Benefits?

In many states, the legal protection for retiree medical benefits is different from the legal protection offered to traditional pension benefits. In some states, this distinction results from the fact that the state has enacted specific protections for pension benefits that it has not extended to retiree medical benefits. For example, Texas's constitution explicitly protects certain public employee pension benefits; but by its terms, the protection does not extend to retiree medical benefits. Even in states that have not enacted explicit laws distinguishing pension and medical benefits for retirees, the manner in which retiree medical benefits are earned and accrued generally distinguishes them from pension benefits for purposes of legal analysis.

Pension benefits are earned and accrued throughout an employee's career, in the same manner as the cash salary an employee earns. For employees covered by a pension plan in 2016, we can put a specific dollar amount not only on their cash salary earned through work but also on their pension benefit. Retiree medical benefits, on the other hand, do not accrue throughout an employee's career and cannot, in any meaningful sense, be valued over time. Instead, retiree medical benefits are thought of as "status benefits": you become entitled to the benefit only after you achieve the requisite status. For example, if an employer offers its employees retiree medical coverage once an employee has worked for ten years and retired on, or after, age 65, an employee would earn or accrue the right to such coverage only after the aforementioned status had been achieved.

This distinction—between the accrual and earning of pension versus retiree medical benefits—matters for purposes of legal analysis. Benefits that are earned and accrued over an employee's working career are typically protected in the same way that cash salary is protected. The U.S. Supreme Court has held that a contract is created where a government makes an offer for employment at a specific salary and the individual accepts the job and performs the work.[6] Once the work has been performed, the government is contractually obligated to pay the promised salary. A similar logic is used with respect to pension benefits: just as an employee is entitled to a promised amount of cash salary in return for work performed, so, too, is the employee entitled to the promised amount of accrued pension benefit. The analogy is not used in the retiree medical benefit context because such benefits do not accrue over time but only upon achievement of the requisite status. As a result, retiree medical benefits—at least for individuals who have not yet retired—tend to be subject to less legal protection than preretirement pension benefits.

Even upon retirement, retiree medical benefits are often treated differently from pension benefits—again, based on the difference in the way such benefits are accrued and valued. At retirement, we know precisely the financial value of the pension benefit to which an individual is entitled. For example, in a traditional defined benefit pension plan, we know the amount of the monthly annuity that the pensioner has earned, as well as the fact that this amount is owed to the pensioner for as long as the pensioner (or the pensioner's spouse, in some cases) lives. The same is not true of retiree medical benefits. In the example above, for instance—where the retiree has completed the required ten years of service and retired on, or after, age 65—without further evidence, we do not necessarily know whether that employee has a lifelong right to medical benefits or whether such benefits can be changed. The terms of a pension promise are clear once an employee retires; but with respect to retiree medical benefits, the terms of the relevant contract must be closely reviewed to determine what, precisely, the employer has promised.

Legal Protection of Public Retiree Medical Benefits vs. Private-Sector Retiree Medical Benefits

In general, there are stark differences between the legal framework that applies to private employer-provided benefits and the framework that applies to public employer-provided benefits. A federal law, the Employee Retirement Income Security Act of 1974 (ERISA), governs nearly all private employer benefit plans, while public employee benefits are instead governed almost entirely by state law. However, when it comes to retiree medical benefits, there

is no significant substantive difference between private and public employer-provided benefits because ERISA does not provide any protection for retiree medical benefits. As a result, for private (and public) employers, legal protection must come in the form of a contract binding the employer. While there are differences in venue (federal courts have jurisdiction over private employer claims), the basic legal analysis does not differ between public and private employer retiree medical benefits.

Basic Principles for Determining Whether a Contract for Retiree Medical Benefits Exists in the State and Local Context

Except in cases where state law contains explicit statutory provisions governing retiree medical benefits, nearly all disputes regarding retiree medical coverage focus on whether a contract exists and what the contract protects. The contractual analysis differs significantly between the collective bargaining context and those situations where a collective bargaining agreement does not exist.

Collective Bargaining Agreements as a Source of Retiree Medical Benefit Rights

Often, health care benefits are a mandatory subject of collective bargaining under state labor law. As a result, in the case of unionized workforces, the collective bargaining agreement contains any agreement between the employer and employees with respect to retiree medical benefits. Because a formal written contract exists in these cases, the inquiry is guided by traditional principles of contract interpretation.

If the parties to a collective bargaining agreement dispute the meaning of contractual provisions related to retiree medical care, the first step is to determine whether the dispute is one that must be resolved under the collective bargaining agreement's grievance procedures. If so, the dispute is typically submitted to arbitration, and the decision of the arbitrator can be overturned by a court only on very narrow grounds.

Where the grievance procedure does not apply, either party can file a contract action in state or, in some circumstances, federal court. In such legal actions, the first step is for the court to determine whether the contractual language is unambiguous. If the language is found to be unambiguous, the court's role is limited to enforcing the contract as written. No extrinsic evidence regarding the contract's scope or meaning is permitted. As a result, in some cases, the legal inquiry will be relatively clear and brief. For example, if a collective bargaining agreement states that "[i]ndividuals covered by this collective bargaining agreement who retire with ten or more years of service during the term of this agreement shall be entitled to continue their medical plan coverage at no cost for life. This provision shall survive the expiration of this agreement," a court would have no difficulty finding that a binding contract exists that protects the benefits of those individuals who satisfied the ten-year service requirement and retired while the collective bargaining agreement was in effect.

If, however, the language in the collective bargaining agreement pertaining to retiree medical benefits is ambiguous, the court's job is much broader. The court must determine, based on both the contractual language and extrinsic evidence, what the parties intended and therefore mutually agreed to. A common area of ambiguity in retiree medical cases involves whether the parties intended for the contractual promise of benefits to extend beyond the term of the collective bargaining agreement. Collective bargaining agreements typically have a specific, limited term, such as three years. As a general rule, contractual rights and obligations do not survive beyond the termination of a collective bargaining agreement. However, rights that accrued or vested under the agreement do survive termination of the agreement. As a result, courts must determine whether the parties intended that the contract give rise to a vested right.

Take the common scenario of a collective bargaining agreement that simply says: "Employees who retire during the term of this agreement with more than ten years of service shall be entitled to continue to receive medical coverage at no cost to them." Assume that this agreement has a three-year duration and that there is no specific language regarding whether any right to retiree medical benefits survives the termination of the contract in three years' time. The language in such cases is generally considered ambiguous with respect to the *duration* of the right. It is clear that employees who retire during the three-year contract period with ten years of service have a contractual right to continue their medical coverage. But it is unclear whether that right extends indefinitely or terminates as soon as the bargaining agreement ends.

An extreme example would be an individual who retires one day before the collective bargaining agreement expires: Would that employee be entitled to continue medical coverage for a single day or for the employee's lifetime? Courts have taken different approaches to resolving that ambiguity. Some allow extrinsic evidence to be admitted to establish the intent of the parties, while others employ inferences regarding the "default" interpretation of this type of ambiguity. One approach taken by courts is based on the principle that retiree medical benefits do not vest unless the employer takes specific action to bind itself to continue such benefits. Based on this principle, some courts have held that, in the

absence of a specific durational commitment, an ambiguous collective bargaining agreement will not be found to extend beyond the life of the bargaining agreement.

Other courts have taken the position that an inference can be fairly made that retiree medical benefits do vest, absent explicit language to the contrary. The basis for this position is that, given that retirees do not participate in future labor negotiations (only current employees are represented by unions, not retirees), it would be nonsensical for a union to bargain for retiree benefits that could be taken away immediately upon expiration of the current agreement. For many years, there was a split among federal courts regarding whether a presumption of vesting should, or should not, be used where retiree medical benefits are provided for in a collective bargaining agreement between a union and a private employer. In 2015, the U.S. Supreme Court weighed in on the conflict in *M&G Polymers* v. *Tackett,*[7] holding that it is contrary to ordinary principles of contract interpretation to presume, in the face of ambiguous language, that retiree medical benefits were intended to vest.[8]

The Supreme Court explained that under traditional contract-interpretation principles, courts should not construe ambiguous writing to create lifetime promises and that, generally, "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement."[9] The Supreme Court noted that traditional contract principles do not "preclude the conclusion that the parties intended to vest lifetime benefits for retirees" because "a collective bargaining agreement [may] provid[e] in explicit terms that certain benefits continue after the agreement's expiration."[10] However, "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life."[11]

Despite the fact that the Supreme Court has ruled on this issue, its decision is not binding on state courts. The Supreme Court binds state courts only on matters of federal law, and cases involving disputes over state and local retiree medical benefits are governed by state law. States may cite the Supreme Court decision as persuasive authority, but states can come to conclusions different from those reached by the Supreme Court. In other words, while the issue is settled for private employer cases, which are governed by federal law, states continue to be able to make their own decisions regarding whether retiree medical benefits can be presumed to vest in cases where contract language is silent regarding duration.

Retiree Medical Claims Outside Collective Bargaining

Disputes involving retiree medical benefits for state and local employees outside collective bargaining tend to differ from the analysis described above because there is typically no formal written contract governing such benefits. While the analysis still centers on whether, in fact, a contract exists that protects retiree medical benefits from impairment, these cases usually involve claims that are based on nontraditional contract forms.

There are several common fact patterns seen in non–collective bargaining cases. Many claims are based on legislation establishing such benefits, such as state statute or local ordinance. Claims based on statute or ordinance can be difficult for a retiree to successfully make because of the principle that legislation does not create a contract absent unmistakable evidence of legislative intent to form a contract. Rather, legislation is considered a statement of current policy that can be freely modified by future legislatures. As a result, absent unmistakable intent to bind future legislatures (such as language stating that "the benefits granted by this statute are considered contractual in nature and may not be impaired or diminished by future legislative action"), no contract exists, and changes to benefits can be freely made, even after an individual has retired.

Because of the difficulty associated with establishing a contract through legislation, retirees often claim the existence of a contract on other grounds. One is to argue that an employee handbook or other written communication from the employer established a contract. In general, these cases are difficult for retirees to win. In some cases, that is because the employee handbook clearly states that it does not bind the employer. In other cases, the court finds that, even without such a disclaimer, governments do not create contractual obligations through such informal writings.

Retirees can also claim the existence of an implied contract. An implied contract is one in which there is not an express agreement between the parties but rather one that can be implied from the conduct of the parties. Often, these claims are based on employers informing employees of the existence of retiree medical benefits and employees rendering work with knowledge of those benefits. Essentially, the claim is that the employer made an implied contractual offer that the employee accepted through service. Courts are generally hesitant to find an implied contract, although, as the case studies below illustrate, they have done so occasionally in the retiree medical context.

Retirees have also made quasi-contractual claims, which essentially seek to impose a contract on the employer even though a contract does not exist. To be successful on such

("promissory estoppel") claims, the retiree must generally show that: (1) the employer made a promise of retiree medical benefits on which the employer reasonably should expect to induce action on the part of the employee; (2) the employee took action in reasonable reliance on the promise; and (3) injustice can be avoided only by enforcing the promise. Many of these claims fail because the court finds that the employee's reliance on the employer's promise was unreasonable—i.e., the employee should have known that the benefits could be amended—or because the court determines that injustice would not result if the promise is not enforced.

Finally, there are cases where individuals claim contractual rights to retiree medical benefits on the basis of specific individual agreements. In some cases, individual employment contracts are involved. These cases are often relatively straightforward—the same rules discussed above in the collective bargaining context apply here. The court begins by determining whether the contract language is unambiguous. If it is not, it allows extrinsic evidence regarding the parties' mutual intent.

III. Case Studies

While the general legal principles that guide the determination of whether retiree medical benefits are protected against change are universal, the ten case studies below offer a more detailed look at how courts in those states have approached legal challenges to retiree medical-benefit changes for state and local workers. Keep in mind that these case studies present summaries of the relevant cases only and that, because of research limitations, these case studies do not include cases that were decided solely at the trial court level. Also note that most of the cases discussed below were brought in state court; but in some cases, the plaintiffs filed suit in federal court. Plaintiffs can do so where they are claiming a violation of federal law. In the retiree medical-benefit context, the federal claim is usually that the state or local government has violated the Contracts Clause of the U.S. Constitution, which prohibits states from impairing the obligation of contracts.

ALABAMA—UNKNOWN PROTECTION (No Collective Bargaining)

As a state that does not have collective bargaining for public employees, Alabama does not have any case law on contractual disputes regarding retiree medical benefits. The only reported case involving a claim related to retiree medical-benefit rights arose in Jefferson County before its bankruptcy filing.[12] In that case, employees challenged the county's decision to give employees an election between enhanced pension benefits and the ability to continue to be eligible for retiree medical benefits. While the Alabama Supreme Court upheld lower court decisions in favor of the county, it did so based on complex legal doctrines that were not focused on a contractual right to retiree medical benefits.

CALIFORNIA—MODERATE PROTECTION

California courts have made clear that government enactments do not, in general, create vested rights.[13] Government employees who claim that retiree medical benefits are vested bear a "heavy burden" to overcome that presumption.[14] However, the California Supreme Court has also held that, despite this heavy burden, California government employers can form implied contracts with their employees that confer vested rights to health benefits.[15] An implied contract "consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words."[16] In other words, under California law, it is possible to imply unmistakable intent to form a contract covering retiree medical benefits from the facts and circumstances of a case rather than explicit written terms. While the existence and terms of an implied contract are manifested by conduct, they are otherwise treated no differently from express contracts under the law. Implied contracts will generally not be read to vary the terms of any express contract that covers the same subject.[17]

To date, California is one of only two states with decisions that cite the U.S. Supreme Court's decision in *Tackett*. A California appellate court approvingly cited the principle from *Tackett* that when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.[18] In that case, the collective bargaining agreement provided that retirees would receive a 100 percent contribution toward the cost of health care. However, the agreement also contained a general termination provision that stated that the agreement was in effect only through June 30, 2011. Based on that language, the court found that the city was permitted to make changes to the contribution amount for retirees following the expiration of the agreement on June 30, 2011.

Cases and Controversies

Orange County. Retired employees of Orange County challenged the county's action to separate retirees from the general employee population for the purposes of determining health plan premiums. The retirees' claim was based on an implied contract for a pooled premium. While the California Supreme Court held that it was possible under state law to form an implied contract for retiree medical benefits,[19]

the federal appellate court hearing the appeal of the district court's ruling in favor of the city held that a longtime policy or practice does not, on its own, create an implied contract without clear governmental intent to create such a right.[20] The case was dismissed on the grounds that the retirees had not raised a genuine issue of material fact regarding an implied contract right to an ongoing pooled premium.

South Pasadena. Where the California appellate court determined that, citing *Tackett*, there could be no presumption of lifetime vesting where the contract was silent on the issue, the court further held that the retirees had failed to present the evidence necessary to establish an implied contract to continued full funding of retiree benefits.[21] While evidence regarding employee expectations was provided, there was no evidence that the city had promised fully funded retiree benefits in perpetuity. There were no job flyers, handbooks, or postings supporting an implied contract, nor was there any evidence of administrator statements regarding the benefits.

Redding. Where the contract language stated that 50 percent of the cost of medical coverage would be paid by the city for "each retiree and dependent, if any, presently enrolled *and for each retiree in the future*" (emphasis added), the California appellate court found the most reasonable interpretation of the language to be that the city committed itself to pay 50 percent of medical insurance premiums for then-active employees when they retired.[22]

Orange Unified School District. The school district was permitted to change the type of retiree medical benefits offered where the policy language at issue stated only that "[t]he District shall underwrite the cost of the District's Medical and Hospital Insurance Program [for eligible retirees]." The California appellate court found the language to be "curiously brief and unspecific" and therefore unable to support a claim for a vested right to a particular type of retiree medical benefit.[23]

CONNECTICUT—MODERATE PROTECTION

While there is only one reported case in Connecticut addressing changes to retiree medical benefits, it is a particularly valuable precedent because it was ruled on by the Connecticut Supreme Court. Like those of all states, Connecticut courts agree that it is well-settled law that contractual obligations will not, in the ordinary course, survive beyond the expiration of a collective bargaining agreement.[24] However, rights that accrued or vested under the agreement will, as a general rule, survive termination of the agreement.

No Presumptions

Years before the U.S. Supreme Court reached its decision in *Tackett*, the Connecticut Supreme Court decided whether, and to what extent, it would apply a presumption—either in favor of vesting or in favor of retiree benefits being limited to the term of the contract. The Connecticut Supreme Court declined to adopt any presumption, instead explaining that the determination of the status of such benefits would be based on "well-established principles of contract interpretation."[25] The intent of the parties "is to be ascertained by a fair and reasonable construction of the written words and ... the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. The mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous."[26]

In the case brought by retired employees and their widows, the Connecticut Supreme Court found the various contracts to be ambiguous where they provided that "the city shall continue in full force and effect the benefits for each employee who retires or dies after the execution of this agreement."[27] In addition, the contracts specified that the medical coverage to be provided to retirees was to be the "major medical [coverage] *currently* in effect which provides *essentially* the following [benefits]" (emphasis added by court).[28] Interpreted together, the court found the language regarding the duration of the right to retiree medical benefits to be ambiguous. In particular, it found the phrase "shall continue" to be unclear. Because the contract language was found to be ambiguous, the court considered extrinsic evidence to establish the intent of the parties.

The court noted that if the contract was interpreted to provide retiree medical benefits only for the duration of the agreement, the benefit would be inconsequential, lasting months or weeks, as plaintiffs no longer would be in a position to negotiate with the city over future benefits once they retired. However, they also discounted the evidentiary value of the city's past practice of continuing to provide retiree health benefits even upon expiration of the relevant bargaining agreement. The court reasoned that administrative practice does not establish the parties' contractual intent.

Nevertheless, the court ended up affirming the trial court's decision in the case—which found that the plaintiffs had a vested contractual right to retiree medical benefits—because the decision was not clearly erroneous. But the court also considered the issue of whether these vested rights to retiree

medical benefits prevented the city from making changes to such benefits. In particular, the city was attempting to move retirees from a traditional health insurance plan to a health maintenance organization. Here, the court found the relevant language regarding the coverage to be provided ("the major medical [coverage] *currently* in effect which provides *essentially* the following [benefits]") unambiguously to allow the employer to make changes to the retiree medical coverage.[29] As a result, while retirees had a vested right to lifelong benefits, the employer was permitted to change the type of health insurance coverage provided.

ILLINOIS—SIGNIFICANT PROTECTION

When it comes to retiree health-benefit rights, Illinois is one of the most protective states. In a recent decision, the Illinois Supreme Court held that the state's constitutional provision protecting pension benefits also applied to retiree health benefits that were tied to an individual's membership in a state retirement system. The court held that if the retiree health benefits are "derived from membership in one of the State's public pension systems," they cannot be diminished or impaired.[30] Thus far, Illinois is the only state to extend constitutional protections to retiree health benefits.

Presumption in Favor of Vesting

In addition to its strong constitutional protection for certain retiree health benefits, Illinois courts have found that—absent specific language regarding the duration of retiree health benefits—the presumption should be that the parties intended for such benefits to vest.[31] In reaching the decision that a presumption should apply, one appellate court focused on the fact that the promise of health insurance benefits in retirement may induce an employee to accept a job and work the requisite number of years, thereby providing a substantial benefit to the employer that, in turn, requires a presumption of vesting once the employee has satisfied the requirements for retiree coverage.[32] In addition, the court found that "fundamental fairness requires a presumption in favor of vesting."[33]

Informal Contracts

While Illinois is generally highly protective of retirees' rights to health benefits, this does not extend to situations where the retiree is basing his rights on legislative action rather than on a formal contract. Retirees cannot, for example, successfully claim contractual rights on the basis of a town ordinance granting retiree health benefits, particularly where the town has a history of changing such benefit grants.[34]

Promissory Estoppel

Illinois courts do recognize a cause of action against municipalities based on promissory estoppel but only when the aggrieved party can establish that the municipality affirmatively acted; that the affirmative act induced substantial reliance; and that the aggrieved party substantially changed its position as a result of justifiable reliance.[35] However, the doctrine of estoppel may not be invoked against a governmental agency except in extraordinary circumstances, especially where public revenues are involved.[36] A finding of estoppel against a public body may be invoked where a party's action was induced by the conduct of municipal officers and where, in the absence of such relief, the party would suffer substantial loss.[37]

MICHIGAN—MODERATE PROTECTION (Special Emergency-Management Powers)

Michigan's constitution explicitly protects public pension benefits in section 24 of article 9: "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." However, this provision has been interpreted by the Michigan Supreme Court not to include in its protection retiree medical benefits because such benefits are not "financial" and cannot be "accrued."[38] As a result, legal protection of retiree health benefits in Michigan must be grounded in contract law.

Several Michigan cases center on benefits offered through collective bargaining agreements—which is unsurprising, given that health insurance benefits are a mandatory subject of collective bargaining in Michigan.[39] Where the collective bargaining agreement provides for the arbitration of disputes, courts have enforced such arbitration requirements and have declined to hear the cases.[40] Where contractual language is unambiguous, past practice cannot change the parties' rights, "unless the past practice is so widely acknowledged and mutually accepted that it creates an amendment to the contract."[41]

In one case that did not involve a collective bargaining agreement, the court held that employees could not use an employee manual to support the finding of a contract. In that case, the manual stated that retirees and their spouses were entitled to the same level of health insurance coverage as full-time employees, but also provided that "[t]he policies and procedures in this manual do not constitute a legal contract."[42] Not only did this language preclude the finding of a contract; it also prevented plaintiffs from making a successful implied contract claim. However, one plaintiff in the same case claimed a contractual right to retiree medical benefits based on a memorandum regarding his retirement that stated: "Your current medical coverage will be maintained."[43] The appellate court found that, for this plaintiff, there was a genuine issue of material fact regarding whether a contract had, in fact, been created and therefore remanded the case for trial.

Contract-Language Disputes

In Michigan, as in other states, contract language is considered ambiguous where "two provisions irreconcilably conflict with each other" or where "a term is equally susceptible to more than one meaning."[44] Below are excerpts of contractual language from two cases that Michigan courts found to be unambiguous:

***Smith* v. *Royal Oak Township*.** "Health Maintenance Organization coverage will be made available to all retirees and their dependents with such costs being paid for by the Township and only during the life of the retiree."[45]

In this case, the dispute was not about the duration of the contract for retiree health benefits but about whether the township had to continue the coverage in place at an employee's retirement. The court found that the contract language was unambiguous in only requiring the township to provide some type of HMO coverage. The contract did not define the term "Health Maintenance Organization" or say anything else about the specifics of coverage to be offered.

***Bachman* v. *City of Jackson*.** "The Employer shall provide and pay the cost of [medical insurance] for all employees covered by this Agreement who retire after July 1, 1979 on a non-duty disability or service retirement."[46]

In this case, the city denied retiree health coverage to employees who were service retirees but who did not have 25 years of service. There was no dispute that the employees at issue were "service retirees"—as that term was used in the bargaining agreement—but the city claimed that the aforementioned language was intended to apply only to service retirees with 25 years of service. Because the contract language was unambiguous that service retirees are entitled to coverage, the city could not introduce extrinsic evidence regarding what was intended by the provision.

Appellate Court Accepts Tackett *Holding*

Michigan is one of only two states that have reported decisions citing the U.S. Supreme Court's recent *Tackett* decision. In *Harper Woods Retirees Association* v. *City of Harper Woods*,[47] the Michigan Court of Appeals held that the U.S. Supreme Court's reasoning in *Tackett* is consistent with Michigan's contract jurisprudence regarding collective bargaining agreements, both public and private. As a result, the retirees in that case were unable to successfully claim a right to lifetime retiree health benefits where the collective bargaining agreements did not explicitly grant such rights.

Emergency Financial Management

Michigan law allows financially distressed local governments to have the governor appoint an emergency manager to address the government's financial emergency. Pursuant to statute, an emergency manager has broad powers to address the financial emergency, including the ability to "reject, modify, or terminate" one or more provisions of a collective bargaining agreement.[48] To do so, both the emergency manager and the state treasurer must find that: the intervention is "reasonable and necessary … to serve a significant and legitimate public purpose"; the change is necessary to deal with a "broad, generalized economic problem"; the change is "directly related to and designed to address the financial emergency for the benefit of the public as a whole"; and the change is "temporary and does not target specific classes of employees."[49]

Two Michigan cities, Pontiac and Flint, have acted under the emergency-manager statute to cut or reduce medical benefits for retirees, and these actions gave rise to several ongoing lawsuits. City of Pontiac retirees filed suit in federal court, alleging, among other things, that the emergency manager's actions reducing retiree medical benefits violated the Contracts Clause of the U.S. Constitution. The federal district court in that case denied the retirees' motions for a temporary restraining order and a preliminary injunction.[50] However, the Court of Appeals for the Sixth Circuit vacated those decisions and remanded the case to district court in order to develop the factual record necessary to analyze whether a Contracts Clause violation had occurred.[51] The parties to the lawsuit were ordered to mediation, but the dispute is still ongoing.

Retirees in Flint similarly filed suit in federal court, also alleging a violation of the Contracts Clause. In that case, the district court granted an injunction preventing the changes from taking effect.[52] The city appealed, and the Sixth Circuit Court of Appeals upheld the injunction and—importantly—held that the actions of the emergency manager constituted legislative action, a necessary component for a successful Contracts Clause claim.[53] The Sixth Circuit noted that the city had failed to establish that there was not a more moderate course to address the fiscal situation short of reducing retiree medical benefits.

However, six months later, the district court lifted the injunction, allowing the changes to take effect because it found that the city had presented evidence that failing to lift the injunction would harm third parties and not be in the public interest.[54] In reaching its decision, the court noted the evidence regarding the necessity of cutting the public-safety budget if retiree medical cuts were not made, as well as the inability of

the city to raise revenue through taxes or borrowing. While the injunction has been lifted, the case is still ongoing and has not yet been decided on the merits.

Funding Challenges

In 2010, the Michigan legislature passed a law attempting, in part, to deal with a school budget shortfall. As part of that legislation, all current public-school employees were required to contribute 3 percent of their wages to pay for retiree medical benefits for current and future retirees. Employees—who previously did not have to contribute toward the cost of such benefits—sued the state of Michigan. The provision was found by the Michigan Court of Claims to be an unconstitutional taking under both the Michigan and U.S. Constitutions. The Michigan Court of Appeals upheld the ruling.[55] The Court of Appeals found the statute to be confiscatory in nature: it required that current public-school employees fund the medical benefits of current public-school retirees, absent any guarantee that the former would ever be eligible to receive medical benefits upon their own retirement.[56]

While that case was pending on appeal to the Michigan Supreme Court, the legislature enacted changes to the statutory law at issue. The new law allowed employees to opt out of retiree medical benefits and thereby avoid the 3 percent contribution. For employees who chose to participate in retiree health care benefits, the 3 percent contribution would be required but would be refunded for any employee who subsequently did not qualify for the benefits. This new legislation was upheld by the Michigan Supreme Court, which found that the voluntary nature of the contribution removed any constitutional infirmity that existed under prior law.[57]

NEW JERSEY—MODERATE PROTECTION

New Jersey does not have any specific constitutional or statutory protection of retiree medical benefits. While state statute does explicitly provide that certain public employee retirees can continue to participate in the state health-benefits program, the statute contains no limitation on the ability of the state to modify such law. As a result, state law on the topic is limited to reported case law, which, in New Jersey, primarily concerns disputes over collective bargaining agreement language.

Contract-Language Disputes

Petersen* v. *Town of Raritan. "Any employee who retires after twenty-five (25) or more years of service … shall continue to receive all health and medical benefits provided by the employer for the remainder of his life. Such coverage shall be provided at the expense of the employer."[58]

The court found that the aforementioned language was unambiguous in allowing the employer to make changes to the *type* of coverage provided to retirees. In this case, the township changed the health plan options offered to current employees and retirees, which the court found was permissible under the aforementioned language. The retiree had argued that this language entitled him to the exact health and medical benefits that were granted upon retirement for the remainder of his life.

Rodbart* v. *County of Union. The court found that language pledging "fully paid health benefits for life" did not entitle retirees to reimbursement of their Medicare Part B premiums beginning at age 65.[59] The court found that there was no representation made to potential retirees that their Medicare premiums would be paid and that the broader context of the agreement made it clear that the offer was only for fully paid employer coverage, not Medicare Part B.

Recognition of Estoppel

New Jersey is one of only a few states with a case on record finding that principles of estoppel prevented a government employer from reducing retiree health benefits. In *Middletown Township Policemen's Benevolent Association Local No. 124* v. *Township of Middletown*, the New Jersey Supreme Court held that the town was estopped from discontinuing the retiree medical benefits of a policeman who had retired under a collective bargaining agreement that provided free health insurance coverage "to all employees who have retired."[60] The grant of retiree medical benefits to this specific policeman violated a state statute that provided that municipalities could cover the cost of retiree medical care only for employees who have retired after 25 years or more of service with the employer. The policeman in the case did not have 25 years of service with the employer and, therefore, was not entitled to benefits under the statute.

The court explained that estoppel may be invoked against a municipality where interests of justice, morality, and common fairness clearly dictate that course. As the court stated: "[T]he doing or forbearing to do an act induced by the conduct of another may work an estoppel to avoid wrong or injury ensuing from reasonable reliance upon such conduct."[61] While estoppel is rarely invoked against a governmental entity, the court awarded it here based on a number of facts.

First, the policeman was "repeatedly assured by Township officials" before his retirement that he would continue to enjoy postretirement medical benefits.[62] In reliance on those assurances, the policeman, in his early forties and with young children to support, chose to retire even though he was only two

and a half years shy of the 25 years of service required by the statute. The court found the reliance of the policeman on the assurance to be in good faith. The court further noted that, at the time of the litigation (ten years after he had retired), he was no longer in a position to find alternative employment that would offer him free family health benefits.

However, in *Petersen* v. *Town of Raritan*, the court rejected an estoppel claim where there was no evidence that the government employer had made any representations that benefits would remain unchanged.[63] Instead, the plaintiff was relying only on his own individual interpretation of the collective bargaining agreement language, an insufficient basis on which to claim justifiable reliance.

NEW YORK—SIGNIFICANT PROTECTION

New York is one of a handful of states that explicitly protect pension benefits in the state constitution. However, New York's appellate court has held that retiree medical benefits are not protected under the pension provision in the constitution.[64]

Statutory Provisions

Section 167 of the Civil Service Law provides for specific contributions toward the health care coverage of state retirees who participate in statewide health-benefit plans. However, New York's appellate court has held that this statute does not create contractual rights.[65] As a result, it can be amended to change the relevant contribution rates.[66]

Existence of a Contract Outside Collective Bargaining

Like most states, New York is hesitant to find a contract to exist on the basis of legislative acts.[67] As one court explained, "certain types of legislative acts, including those fixing salaries or compensation, are not presumed to create a contract" but rather are simply a declaration of policy "to be pursued until the legislative body shall ordain otherwise."[68] Yet New York courts have recognized the possibility of making a promissory estoppel claim in the retiree medical context. To do so, the plaintiff must show that the government's misconduct, in the form of false statements, has induced justifiable reliance by a party who then changed his position to his detriment.[69] Such cases are very fact-specific and often center on the representations made.

Contract Interpretation

New York courts utilize a standard definition of ambiguity, holding that "a contract is ambiguous if the language used lacks a definite and precise meaning and there is a reasonable basis for a difference of opinion."[70] However, without explicitly labeling it a presumption, New York courts seem to embrace the position that it seems unlikely that unions would bargain for retiree benefits that were granted only for the term of the collective bargaining agreement. As a result, where language is found to be ambiguous, New York courts tend to favor an interpretation that vests retiree health benefits.[71]

Where contract language is found to be ambiguous, courts allow the parties to introduce extrinsic evidence to establish mutual intent. In one case, the court found that a 19-year practice of providing fully paid retiree health benefits, even after the expiration of various collective bargaining agreements, constituted "very substantial evidence that the provisions in question were intended to provide benefits to retirees for the entire period of their retirement."[72]

Contract-Language Disputes

Guerrucci. "Any administrator who retires … shall continue to receive the BC/BS coverage in effect at the time of his or her retirement, excluding dental coverage and major medical insurance, until the administrator becomes eligible for Medicare."[73]

The court found this language unambiguously to provide that administrators had a contractual right to coverage until they became eligible for Medicare.

Kolbe. "The coverage provided shall be the coverage which is in effect for the unit at such time as the employee retires." The cost of such coverage will be paid by the district "until the employee reaches age 70."[74]

The court found that this language unambiguously created a right for employees to continue their coverage through age 70 but remanded the case for further determination of whether the contractual right to the "same coverage" precluded any modifications to the benefits or their attendant costs.

Warner. "Individuals who retire during the term of the contract shall be covered at the rate of 100 percent of the charge for individual coverage and 75 percent of the charge for dependent coverage, as applicable. Employees … shall be required to satisfy ten (10) years of service in order to be eligible to continue the health insurance program in retirement as offered by the District."[75]

The court found that this language unambiguously provided for benefits to continue for as long as the individual was retired. It did so on the basis of the term "in retirement," interpreting that term as unambiguously requiring the employer to continue coverage throughout the employee's retirement.

Millington. "The Village shall pay 100% of the retiree's medical insurance premium for the individual, dependent (two [2] persons), family, or Medicare coverage."[76]

The court found that, despite the use of "or" in the language above, such language unambiguously required the village to pay the full cost of coverage under the village's medical insurance plan *and* to reimburse the retiree for his Medicare Part B premium.

Agor. "[Teachers] who retire from [the school district] with 25 years [of] consecutive service ... shall be entitled to Medicare reimbursement for themselves and their spouses, while the retired Employee is still living."[77]

A later bargaining agreement eliminated the provision regarding Medicare reimbursement; individuals who had retired under prior bargaining agreements that provided for Part B reimbursement sued. The court found the aforementioned language ambiguous regarding the duration of the right to Medicare reimbursement. In part, this ambiguity was based on the past practice of the parties of including in their various bargaining agreements language governing not only individuals who retired during the term of the agreement but also language covering individuals who had retired under previous agreements. Given the past practice of amending the retiree medical provisions in future bargaining agreements, the court remanded the issue to the trial court to determine the parties' intent.

OHIO—UNKNOWN PROTECTION

Ohio has relatively little case law concerning legal rights to retiree medical benefits. The case law that exists is generally consistent with the legal principles described in Section II. Individuals are entitled to retiree medical benefits if the government has offered such benefits pursuant to a contract. Where early retirees in Cincinnati signed an agreement stating that "[t]his [early retirement agreement] shall not affect the manner or type of medical coverage for which Employee is eligible, once retired under CRS," the court found the language was unambiguous that no health benefits were covered by the terms of the early retirement agreement and thus could not form the basis of any legal right to such benefits.[78]

Legislative action, such as municipal ordinances, cannot—absent clear indication of the intent to form a contract—provide legal rights to retiree benefits.[79] As explained by the court, "absent some clear indication that the legislature intends to bind itself contractually, the presumption is that 'a law is not intended to create private contractual or vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise.' "[80] Finally, Ohio courts have held that estoppel claims are not available against a political subdivision when the political subdivision is engaged in a governmental function. The provision of a retirement system for public employees is considered a governmental function, thereby precluding such claims, even where government officials made multiple statements about the permanence of retiree medical benefits.[81]

PENNSYLVANIA—SIGNIFICANT PROTECTION

Pennsylvania has two statutory provisions that have had prominent roles in retiree medical disputes within the commonwealth. The first of these is the Home Rule Charter Law, which provides that a home rule municipality shall not "[b]e authorized to diminish the rights or privileges of any former municipal employee entitled to benefits or any present municipal employee in his pension or retirement system."[82] The Supreme Court of Pennsylvania implied, in an early case, that this provision prevented retiree medical reductions for current retirees as well as current employees but did not directly rule on the issue.[83] A later appellate court decision held that only retirees were protected under the statute's provisions, not current employees who had not yet retired.[84]

Several years later, a different appellate court disagreed, finding that postretirement medical benefits for current employees were part of a "retirement system" and therefore protected against diminishment even before retirement.[85] The Pennsylvania Supreme Court declined to hear an appeal of that case. As a result, Pennsylvania law is unsettled regarding the extent to which the Home Rule Charter Law protects current employees from a reduction in their retiree medical benefits. The Pennsylvania Supreme Court has, however, held that in determining what constitutes a "diminishment" for purposes of the statute, reference must be made to the current rights held by the affected individual. In that case, an arbitration award specified the terms of retiree medical benefits, but the court found that the award did not cause any diminishment, given that the terms of the award were not materially different from the previous two labor agreements.[86]

The second statutory provision that has had significant impact in retiree medical litigation is the Municipal Financial Recovery Act.[87] That statute provides various rules and procedures to help financially distressed municipalities regain financial stability. As part of the statute, distressed municipalities develop a recovery plan. The statute provides that any collective bargaining agreement or "arbitration settlement" executed after the municipality adopts a plan shall not "violate, expand, or diminish" the plan's provisions. In 2011, the Pennsylvania Supreme Court considered whether

the term "arbitration settlement," as used in the Financial Recovery Act, included an Act 111 arbitration award. (Act 111 arbitration refers to the binding arbitration for labor disputes involving police and firefighters that is provided for under state statute in exchange for such employees being unable to strike.)[88]

In that case, the City of Scranton's financial recovery plan stated that certain cost-containment measures should be considered mandatory provisions in the event of labor arbitration. The Act 111 arbitrators did not, however, abide by all such cost-containment measures. In particular, they provided for a right to paid retiree medical benefits. The city appealed the arbitration award, on the basis that it violated the Financial Recovery Act by violating the city's financial recovery plan. The Pennsylvania Supreme Court held that the term "arbitration settlement," as used in the act, was ambiguous and that, when weighing all the facts and circumstances, Act 111 arbitration awards were *not* bound by the Financial Recovery Act limitations on "arbitration settlements."[89] As a result, the court upheld the arbitration award granting retiree medical benefits.

Scope of Court Review of Act 111 Arbitration Awards

In several cases, Act 111 arbitration stipulated the scope of retiree medical benefits to be offered to covered employees. Such arbitration awards have been frequently challenged in courts. Yet Pennsylvania courts are clear that their role in reviewing such awards is highly limited.[90] In reviewing such awards, courts may review only the jurisdiction of the arbitrator, the regularity of the proceedings, whether the arbitrator's powers were exceeded, or whether the award works a deprivation of constitutional rights. An arbitrator's powers are exceeded only where the arbitrator orders an illegal act. The one exception to this line of holdings concerns the City of Philadelphia, which is subject to a unique statutory provision that allows a much broader review of Act 111 arbitration awards.[91]

Existence of a Contract Outside Collective Bargaining

Like those of other states, Pennsylvania courts are hesitant to find a contract for retiree health benefits to exist absent explicit language establishing such a contract. For example, an employer's unilateral act of publishing its policies did not amount to the "meeting of the minds" required for a contract.[92] As the court explained, the terms of the handbook were not bargained for by the parties, and any benefits conferred by it were mere gratuities. The court further stated that employees can regard the terms of the handbook as creating a legal binding relationship only when the handbook clearly indicates that the terms of the handbook have such effect.

TEXAS—MODERATE PROTECTION
(No Collective Bargaining)

The Texas Constitution protects certain pension benefits for public employees but explicitly excludes from its reach any medical benefits.[93] As a result, any protection for retiree medical benefits must come from the finding that the government entered into a contract with retirees granting such benefits. Because Texas public employees are not permitted to engage in collective bargaining,[94] there are no cases interpreting the language of formal contracts. Instead, the cases that have been litigated are based on claims that other types of governmental action created contracts.

City Ordinances and Agreements as the Basis for Contract

In a case that did not concern retiree medical benefits, the Texas Supreme Court held that city ordinances could create contracts.[95] The court explained that ordinances could be considered unilateral contract offers that were accepted by employees through performance of services. A Texas Appellate Court subsequently cited this ruling to support the finding of a contract for retiree medical benefits from district ordinances.[96] In that case, the district—in an attempt to encourage employees to continue working past normal retirement age—offered employees who did so (and satisfied other criteria) the ability to continue participating in active employee health insurance until either the employee or his spouse reached 65, whichever occurred later. The court found that, through the resolution, the district made a contractual offer to employees that those employees accepted by continuing to work for the district. As a result, a binding contract was formed and could not be rescinded by later resolution.

In an earlier appellate court case, the court found that a resolution granting fully paid health insurance coverage to retirees did *not* form a contract.[97] The basis for that ruling was that there was no consideration given by the retirees for the grant of retiree medical benefits, which is a necessary element for contract formation. Essentially, because the retirees were granted the benefit after they had completed their service to the employer, the retiree did not need to do anything to receive the benefit. This is distinct from the unilateral contract scenario, where the workers had to continue working in order to become eligible for the benefit. Where the benefit is granted without any condition, it is legally considered to be a gratuity and does not enjoy protection against later impairment.

IV. How to Evaluate Retiree Medical Legal Protections

Employers and employees have an interest in determining the extent to which retiree medical benefits are legally protected. For employers, various fiscal pressures may create an interest in reducing retiree benefits. For employees, it is important to know if an offer of retiree medical benefits can be relied upon. Below is a generalized overview of how employers and employees can evaluate the relevant legal protections.

STEP ONE: IS THERE A FORMAL CONTRACT THAT OFFERS RETIREE MEDICAL BENEFITS?

If a formal contract does not exist, it is much less likely that a court will find retiree medical benefits to be legally protected against unilateral change. Without a formal contract, employees must either establish the existence of a contract through nontraditional forms, such as legislation or an employee handbook, or must argue that the government is estopped from making changes to retiree medical benefits. To make a successful estoppel claim, employees must establish that the government made a promise, employees relied on the promise to their detriment, and injustice would result if the promise was not enforced. Such claims are difficult to establish. As a result, the lack of a formal contract will often enable an employer to make unilateral changes.

STEP TWO: IF THERE IS A FORMAL CONTRACT, WHAT IS ITS DURATION?

Where a contract exists, the next step is to determine if it clearly states the duration for which retiree medical benefits have been promised. In general, stating in the contract that the benefits will continue "for life" or "until the retiree attains age 65" is considered unambiguous and will be enforced as written. Where the contract is silent as to duration, much depends on whether the jurisdiction utilizes a presumption that retiree medical benefits vest, absent specific language to the contrary. With the recent U.S. Supreme Court decision in *Tackett*, we may see more states hold that a collective bargaining agreement that is silent as to the duration of retiree medical benefits creates a right to such benefits only during the term of the contract and not beyond. However, states are not bound by the decision, and some may continue to apply a presumption that retiree medical benefits offered in a collective bargaining agreement are vested and survive the termination of the agreement.

STEP THREE: WHAT BENEFITS DOES THE CONTRACT PROMISE?

While duration may be of significant concern for those jurisdictions that are interested in completely eliminating retiree medical benefits, many jurisdictions may instead be interested in retaining such coverage but implementing plan changes that will result in cost savings to the employer. For such jurisdictions, it is critical to examine the contract language regarding what, precisely, has been promised. Where the contract simply states that "medical coverage" or "health coverage" will be provided, there is typically much employer discretion to make changes to the type of coverage provided to retirees, as well as to cost-sharing provisions.

At the other end of the spectrum, where the contract grants retirees the right to continue to receive the coverage in place at the date of their retirement, courts often interpret this language to prohibit employers from making any changes to the coverage. Where contracts allow for retirees to continue participating in the active employee health plan, courts typically require the employer to keep retirees in that plan, subject to any changes that are made to the active employee plan. For example, if deductibles and co-pays are raised for active employees, they can also be raised for retirees. Where contracts reference a specific insurance product, such as "Acme Company Preferred Provider Coverage for the Central Region," courts often consider the contract ambiguous regarding whether cost-sharing or other provisions within that insurance product may be unilaterally changed. In such cases, the court will examine extrinsic evidence to determine the intent of the parties.

V. Conclusion

When employers eliminate or reduce retiree medical benefits, such actions are likely to face legal challenges. This paper allows employers and employees to better understand their respective legal positions, by offering a framework in which to evaluate the strength of the relevant legal protections for retiree medical benefits. Keep in mind, however, that retiree medical disputes are always highly fact-specific and—given the importance of a court's interpretation of specific contract language—sometimes hard to predict.

Employers and employees would, of course, do well to ensure that the contract language used is not ambiguous. Collective bargaining agreements providing for retiree medical benefits should specifically state the duration of such benefits, the substance of the coverage to be provided, and the ability, if any, of the employer to make changes to the cost-sharing provisions of such coverage. More precise contract language could prevent many retiree medical legal disputes. And outside the collective bargaining context, employers should clearly communicate whether the benefits should be considered contractual.

Endnotes

1 Byron Lutz & Louise Sheiner, *The Fiscal Stress Arising from State and Local Retiree Health Obligations*, 38 J. Health Econ. 130 (2014).

2 Governmental Accounting Standards Board, No. 349, Statement No. 74 of the Governmental Accounting Standards Board: Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans (2015); Governmental Accounting Standards Board, No. 350, Statement No. 75 of the Governmental Accounting Standards Board: Accounting and Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans (2015).

3 Richard L. Kaplan et al., *Retirees at Risk: The Precarious Promise of Post-Employment Health Benefits*, 9 Yale J. Health Pol'y, L. & Ethics 287, 296–300 (2009).

4 States selected according to various criteria, including size, extent of retiree medical obligations, and existence of relevant state law.

5 Mich. Comp. Laws Ann. §141.1552.

6 Mississippi ex rel. Robertson v. Miller, 276 U.S. 174, 178–79 (1928).

7 135 S.Ct. 926 (2015).

8 *Id*. at 937.

9 *Id*. (internal citations omitted).

10 *Id*. (internal citations omitted).

11 *Id*.

12 Greene v. Jefferson County Commission, 13 So.3d 901 (Ala. 2008).

13 South Pasadena Policy Officers' Ass'n v. City of South Pasadena, 2015 WL 1094691 *3 (Cal. Ct. App. 2015).

14 *Id*.

15 Retired Employees Ass'n of Orange County, Inc. v. County of Orange, 266 P.3d 287, 289 (Cal. 2011).

16 *Id*. at 290.

17 *Id*.

18 South Pasadena Policy Officers' Ass'n v. City of South Pasadena, 2015 WL 1094691 *4 (Cal. Ct. App. 2015).

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24 Poole v. City of Waterbury, 831 A.2d 211, 220 (Conn. 2003).

25 *Id*. at 222–24.

26 *Id*. at 224.

27 *Id*. at 218.

28 *Id*. at 232.

29 *Id*.

30 Kanerva v. Weems, 13 N.E.3d 1228, 1239 (Ill. 2014).

31 Matthews v. Chicago Transit Authority, 9 N.E.3d 1163, 1187 (Ill. Ct. App. 2014).

32 Marconi v. City of Joliet, 989 N.E.2d 722, 731 (Ill. Ct. App. 2014).

33 *Id*. at 731.

34 Knierm v. City of Casey, 2013 IL App (4th) 120839-U; Yocom v. City of Casey, 2013 IL App (4th) 120841-U.

35 Monat v. County of Cook, 750 N.E.2d 260, 270 (Ill. Ct. App. 2001).

36 County of Cook v. Patka, 405 N.E.2d 1376 (Ill. Ct. App. 1980).

37 Cities Service Oil Co. v. City of Des Plaines, 171 N.E.2d 605 (Ill. 1961); Trochelman v. Village of Maywood, 631 N.E.2d 334, 336 (Ill. Ct. App. 1994).

38 Studier v. Michigan Public School Employees' Retirement Board, 698 N.W.2d 350, 366 (Mich. 2005).

39 County of Wayne v. Michigan AFSCME Council 25, 2014 WL 5066057 *1 (Mich. Ct. App. 2014).

40 *Id*. at *3.

41 Macomb County v. AFSCME Council 25, 833 N.W.2d 225, 235 (Mich. 2013) (internal citations omitted).

42 Smith v. Royal Oak Township, 2012 WL 3705338 *3 (Mich. Ct. App. 2012).

[43] *Id*.

[44] Loose v. City of Dearborn Heights, 2012 WL 6050562 *5 (Mich. Ct. App. 2012) (internal citations omitted).

[45] Smith v. Royal Oak Township, 2012 WL 3705338 *2 (Mich. Ct. App. 2012).

[46] Bachman v. City of Jackson, 2003 WL 22962068 *1 (Mich. Ct. App. 2003).

[47] Harper Woods Retirees Association v. City of Harper Woods, 2015 WL 5737812 (Mich. Ct. App. Oct. 1, 2015).

[48] Mich. Comp. Laws Ann. §141.1552.

[49] *Id*.

[50] City of Pontiac Retired Employees v. City of Pontiac, 2012 WL 2917311 (E.D. Mich. 2012).

[51] City of Pontiac Retired Employees Association v. Schimmel, 751 F.3d 427 (6th Cir. 2014).

[52] Welch v. Brown, 935 F.Supp.2d 875 (E.D. Mich. 2013).

[53] Welch v. Brown, 551 Fed.Appx. 804 (6th Cir. 2014).

[54] Welch v. Brown, 2014 WL 2931389 (E.D. Mich. 2014).

[55] AFT *Michigan v. State of Michigan,* 825 N.W.2d 595 (Mich. Ct. App. 2012).

[56] *Id*.

[57] AFT Michigan v. State of Michigan, 866 N.W.2d 782 (Mich. 2015).

[58] Petersen v. Town of Raritan, 12 A.3d 250 (N.J. Super. Ct. App. Div. 2011).

[59] Rodbart v. County of Union, 2009 WL 4892625 (N.J. Super. Ct. App. Div. 2009).

[60] Middletown Township Policemen's Benevolent Association Local No. 124 v. Township of Middletown, 744 A.2d 649 (N.J. 2000).

[61] *Id*. at 652 (internal citation omitted).

[62] *Id*. at 654.

[63] Petersen v. Town of Raritan, 12 A.3d 250 (N.J. Super. Ct. App. Div. 2011).

[64] Lippman v. Board of Education of Sewanhaka Central High School District, 104 A.D.2d 123 (N.Y. App. Div. 1984).

[65] Retired Public Employees Ass'n, Inc. v. Cuomo, 123 A.D.3d 92 (N.Y. App. Div. 2014).

[66] For several years, New York also had a statute that prevented school districts from diminishing the health insurance benefits provided to retirees—or the contributions such board, or district, made for such health insurance coverage—unless a corresponding diminution was made to the benefits provided to, or the contributions made to, active employee health insurance coverage. This statute has expired and is no longer in effect.

[67] *See* Handy v. County of Schoharie, 244 A.D.2d 842 (N.Y. App. Div. 1997).

[68] *Id.* at 843–44 (internal citations omitted).

[69] Allen v. Board of Education of the Union Free School District No. 20, 168 A.D.2d 403, 404 (N.Y. App. Div. 1990).

[70] Agor v. Board of Education, 115 A.D.3d 1047, 1048 (N.Y. App. Div. 2014) (internal citations omitted).

[71] *See id.* at 1049; Kolbe v. Tibbetts, 3 N.E.3d 1151, 1156–57 (N.Y. 2013); Warner v. Board of Education, 108 A.D.3d 835, 835 (N.Y. App. Div. 2013).

[72] Myers v. City of Schenectady, 244 A.D.2d 845, 847 (N.Y. App. Div. 2013).

[73] Guerrucci v. School District of City of Niagara Falls, 126 A.D.3d 1498, 1499 (N.Y. App. Div. 2015).

[74] Kolbe v. Tibbetts, 3 N.E.3d 1151, 1154–55 (N.Y. 2013).

[75] Warner v. Board of Education, 108 A.D.3d 835, 835 (N.Y. App. Div. 2013).

[76] Millington v. Village of South Glen Falls, 915 N.Y.S.2d 432, 435–36 (N.Y. Sup. Ct. 2010).

[77] Agor v. Board of Education, 115 A.D.3d 1047, 1047 (N.Y. App. Div. 2014).

[78] Bates v. City of Cincinnati, 7 N.E.3d 521, 524 (Ohio Ct. App. 2013).

[79] Gamel v. City of Cincinnati, 983 N.E.2d 375, 379 (Ohio Ct. App. 2012).

[80] *Id*. at 377 (internal citation omitted).

[81] *Id*. at 379.

[82] 52 Pa. Cons. Stat. §2962(c)(3).

[83] In re Appeal of Upper Providence Township, 526 A.2d 315, 322 (Pa. 1987).

[84] City of Pittsburgh v. Fraternal Order of Police, 911 A.2d 651, 656–67 (Pa. Commw. Ct. 2006).

[85] Fraternal Order of Police, Flood City Lodge No. 86 v. City of Johnstown, 39 A.3d 1010, 1017 (Pa. Commw. Ct. 2012).

[86] City of Pittsburgh v. Fraternal Order of Police, 938 A.2d 225, 231–32 (Pa. 2007).

[87] 53 Pa. Cons. Stat. §§11701.101–11.701.712.

[88] 43 Pa. Cons. Stat. § 217.1-.10.

[89] City of Scranton v. Firefighters Local Union No. 60, of the International Ass'n of Firefighters, AFL-CIO, 29 A.3d 773, 787–88 (Pa. 2011).

[90] *See, e.g.,* City of Pittsburgh v. Fraternal Order of Police, 938 A.2d 225 (Pa. 2007); Township of Wilkins v. Wage and Policy Committee of the Wilkins Township Police Departments, 696 A.2d 917 (Pa. Commw. Ct. 1997).

[91] *See* City of Philadelphia v. Fraternal Order of Police Lodge No. 5, 916 A.2d 1210 (Pa. Commw. Ct. 2007).

[92] Bernstein v. Commonwealth of Pennsylvania, 617 A.2d 55, 60–61 (Pa. Commw. Ct. 1992).

[93] Tex. Const. art. 16, §66.

[94] Texas Gov't Code §617.002.

[95] City of Houston v. Williams, 353 S.W.3d 128 (Tex. 2011).

[96] Davidson v. McLennan County Appraisal District, 2012 WL 3799149 *6 (Tex. Ct. App. 2012).

[97] Lee v. Midland County, 2001 WL 92374 (Tex. Ct. App. 2001).

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REPORT 7

Abstract

When U.S. state and local governments eliminate or reduce retiree medical benefits—one of the most important contributors to these governments' long-term fiscal imbalances—such actions typically face legal challenges. This paper examines the legal framework and protections that apply to state and local government retiree medical benefits to help stakeholders better understand the extent of legal rights to such benefits.

Key Findings

1. The protection of retiree medical benefits varies significantly by state and circumstance: employees who are covered by a collective bargaining agreement that grants retiree medical benefits typically have greater legal protection against benefit changes, compared with employees who must establish legal protection through nontraditional contract forms, such as those arising from legislation or employee handbooks.

2. Of the ten states reviewed herein, three—Illinois, New York, and Pennsylvania—provide significant protection for retiree medical benefits, either through explicit statutory provisions or through case law suggesting that retiree benefits vest for life in the absence of explicit language to the contrary; five states—California, Connecticut, Michigan, New Jersey, and Texas—provide a moderate level of protection, with the specifics varying significantly from case to case; and two states—Alabama and Ohio—lack sufficient legal precedent to make any generalizations regarding the legal approach typically used.

3. More precise contract language could prevent many retiree medical legal disputes: collective bargaining agreements providing for retiree medical benefits should specifically state the duration of such benefits, the substance of the coverage to be provided, and the ability, if any, of the employer to make changes to the cost-sharing provisions of such coverage; outside the collective bargaining context, employers should clearly communicate whether the benefits should be considered contractual.

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