

Is Health Care Pooling a Vested Benefit?

Regardless of whether an employer contribution is provided, many public agencies offer their retirees access to the same health plan provided to active employees. The PERS health care program is structured in this way – anyone not enrolled in Medicare pays the same health plan rates, whether an active or retired employee. This “pooling” of risk for purposes of determining health plan premiums is a huge benefit to retirees, who would otherwise pay a lot more for coverage under a retiree-only health plan, if such a plan were offered. GASB also recognizes pooling as a benefit. Under GASB 45, employers must calculate the value of this “implied subsidy” for retirees.

Because pooling is an enormous benefit to retirees, is it a “benefit” on its own? Is it a vested benefit? A lawsuit filed on November 5th by the Retired Employees Association of Orange County (REAOC) aims to find out.

Orange County has been taking all sorts of drastic measures to get a handle on county finances, and a lot of those measures have been to the detriment of its employees and retirees. We’ve reported on Supervisor Moorlach’s lawsuit to eliminate retroactive benefit improvements. The County also cut its employer contribution for health benefits in half for retirees eligible for Medicare. And then it decided to de-pool its health plans, requiring separate health plan rates for actives and retirees.

By de-pooling health plan risk pools, active employee premiums will go down since the active employees are no longer partially shouldering the burden of the older, sicker retirees. Because Orange County provides an employer contribution for its active employees based on a percentage of premiums, the County’s costs for active employee health benefits will

also go down. Also, by eliminating the pooling subsidy, the County will no longer need to account for its liability associated with the implied subsidy (as required under the GASB 45 financial reporting standards). According to the petition, the County estimates that the elimination of these pooled benefits will save over \$10 million per year.

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significantly higher as a result of de-pooling. That \$10 million has to come from somewhere. For many retirees, there is no option other than paying the higher health plan rates. Because of health risks or preexisting conditions, retirees under the age of 65, as well as those retirees not eligible for Medicare, may have no other option for obtaining health coverage. (Orange County employees didn’t participate in Medicare until 1986, so the oldest retirees may not be Medicare-eligible.)

The REAOC hired the firm Moscone, Emblidge & Quadra to request the Southern Division of the U.S. District Court to provide injunctive relief.

If injunctive relief is granted, the County would be prevented from implementing de-pooling. The new health plan rates are set to take effect on January 1, 2008, and so far, there’s been no response from the courts. (Nobody ever said that justice moves quickly.)

REAOC’s petition alleges that Orange County acted unilaterally in removing a vested benefit, since retirees aren’t participants in the collective bargaining process. While REAOC members were actively employed, they agreed to subsidize retiree health plan rates because of an expectation that they would receive the same pooling benefit upon their retirement. In the case of Orange County, benefit pooling has been in place for decades, and the retirees are arguing that there was an implied promise that pooling would continue. During some bargaining sessions, the petition alleges, the County referred to pooled health plan rates as part of the lifetime benefit package. Furthermore, retirees relied on the implied pooling promise when making important decisions – particularly when they could afford to retire. At this point, REAOC says that many retirees are incapable of returning to active employment, so no other remedy is available to them. REAOC represents over 5,300 retirees whose average age is nearly 70.

If your agency has considered de-pooling active and retiree health plan rates, you should keep an eye on the outcome of this lawsuit.

