Proposed Modifications to Pension Spiking Assessments

In 2021, the NC General Assembly charged the Treasurer's Office and the NC School Boards Association to form a working group to determine if modifications to the pension liability statutes were warranted. Specifically, the group was tasked with making findings and recommended changes based upon the following:

(1) Reducing the incidence of future litigation regarding the anti-pension-spiking contribution-based benefit cap ("CBBC");
(2) Reducing the incidence of unfunded pension liabilities associated with compensation decisions;
(3) Assessing the feasibility of using mediation, arbitration, or non-jury trials to settle disputes with local boards of education and other entities regarding the anti-pension-spiking contribution-based benefit cap; and
(4) Any other issues the working group wishes to address.

Thus, the legislative mandate for the working group was to research, consider and address the impact of the CBBC on public school employees specifically and recommend reasonable revisions. The mandate did not include recommendations on repealing the law altogether – as a result, that option was not on the table for discussion at any time.

Over the course of approximately 18 months, conversations centered around why the original law was put in place, and the group engaged in a detailed analysis of a) the salary requirements set by statute for public school employees and b) the natural trajectory of employee promotions that is unique to public schools.

In the end, the working group agreed to recommend "safe harbor" provisions to address a) the growing number of principal retirements triggering liability under the CBBC law and b) the application of the CBBC law to the retirements of central office employees and superintendents who served as teachers and principals in North Carolina over a significant period of their career.

The new safe harbor for LEAs applies to the retirements of employees who either:

(1) Were employed by an LEA during their highest 4 years of salary (i.e. their Average Final Compensation or "AFC") in a position where the State specified a dollar amount from state funds for their salary; OR
(2) Served in such a position for at least 12 years during their career.

For the retirements of such employees, the following new exemptions to assessments under the CBBC law would now apply:

(1) If the employee did not receive a local supplement in excess of 20% in any year used to determine their AFC then, upon certification from the LEA, **any assessment calculated under the CBBC law will be <u>waived in full.</u>**

(2) If the employee does not qualify for a full waiver, the CBBC assessment is reduced by 50% as long as the employee received a local supplement of less than 50% in all years used to determine their AFC.

These changes will be applied retroactively to CBBC assessments made on or after July 1, 2021, according to the bill as filed, but it is the group's intention to modify the retroactive date to January 1, 2021.

In addition, for retirements beginning in 2023, an employee's average final compensation must be at least $126,956.05 in order to be subject to the CBBC law at all. These recommended changes, in combination with the increased threshold for liability, will, if approved by the General Assembly, save LEAs substantial amounts in CBBC liabilities.

We have included below some sample scenarios that demonstrate how the recommended changes will impact LEA's potential liabilities under the CBBC law moving forward. In all of these examples, it is assumed that the employee is above the AFC threshold amount, which is currently $126,956.05.

Example 1: A principal retires and has received a local supplement of 18% in each of his/her highest four years. Outcome: Upon certification by the LEA, the assessment will be waived in its entirety.

Example 2: A superintendent retires. Said superintendent was a classroom teacher for six years and a principal for six years before moving into roles as a district-level director, assistant superintendent, and superintendent. The superintendent's local supplement was 15% in three of the highest four years and 21% in the fourth year. Analysis: The employee satisfies the employment status by having served in a position with a designated salary for a combined twelve years. The employee does not satisfy the requirement of not exceeding a 20% local supplement in all four years but does satisfy the requirement of being below 50% in all four years. Outcome: Upon certification, the assessment will be reduced to 50% of the amount calculated under the CBBC. However, if the fourth year supplement had been 20% or less, note that the assessment would be waived in its entirely.

Example 3: The EC director retires, and she meets the threshold for CBBC liability. Said administrator was a special education teacher for 11.5 years before she moved into her role as the EC director. Outcome: The LEA is responsible for the assessment. No further analysis needs to be done concerning local supplement because the retiree did not retire from a position where the State specified a dollar amount from state funds for their salary, nor had she served at least 12 years in such a position.