

## MEMORANDUM

**TO:** ALL PANJ MEMBERS

**FROM:** DAVID I. FOX, ESQ.

**DATE:** JUNE 29, 2011

**SUBJECT:** ADOPTION BY ASSEMBLY OF LAW ALREADY ADOPTED BY SENATE (S2937-A4133) ON JUNE 23, 2011 – UPDATES ON PREVIOUS COMMENTS

---

We have previously given to you and you have given to members a detailed analysis of the newly combined legislation in one bill (S2937-A4133). This legislation was signed into law by Governor Christie on June 28, 2011.

There is basically only one change from the previous information which you have received from us and submitted to our members. The extremely offensive language basically prohibiting State Health Benefits Plan payment for out-of-state hospitals and doctors has been removed.

Otherwise, the other items in the communications from you to your members and from us remain the same.

As has been previously reported, the legislation takes effect immediately. As has been previously pointed out so far as PANJ members are concerned, the impact of the major offensive part of the legislation which is the increase in the contribution to health benefits phased in over four years, does not start until the end of the contract and the beginning of the first year of the a new contract. The PANJ contract which is the Judiciary contract, unlike almost all other Executive Branch contracts, expires June 30, 2012. Therefore, the critical aspects of the law do not impact our members until after that, namely July 1, 2012.

On July 1, 2012, the four-year phase in of the health benefits payment should commence. In other words, even though a year will have passed then from the start of the law, it appears that for purposes of the phase in the start of the four-year period of time is when the law impacts upon us (July 1, 2012).

The PANJ Executive Board, of course has authorized the Legal Committee to opt to start a lawsuit. This is likely to happen.

On behalf of other unions, PANJ's attorneys are already involved with lawsuits on the first round of legislation including challenges to the 1.5% of salary mandatory payment to health benefits.

Some of the bases and series in the lawsuit are as follows:

1. The increased payment for health benefits which can be up to 35% of the premium cost and for most PANJ members in the family plan will be either 32% or 35% when finally phased in, is among other things because it is an improper form of taxation on a limited group of people (public employees), violates contract rights, and violates a number of other constitutional prohibitions. Other laws are violated including but not limited to a recent federal law on health care.
2. The most egregious violation of the law appears to be the requirement that those with under 20 years in PERS at the time of the passage of the law (presumably June 27, 2011) must make payment after retirement out of their pensions for health care. First of all, we note the payment is designated for health care but in most cases goes directly to the employer and, therefore, is no more than a blatant reduction in pay given as a reason of the need for money because of health care expenses. Part of the overall constitutional argument is that if this payment is allowed then it can be increased to any amount from the 1.5% to 35% of the premium for family plan which translates into an amount equivalent to roughly 8 to 9% of the pay. This violates the vesting provisions of law as to pensions (they vest after five years), and many other provisions of law as well as contract rights.
3. The elimination of cost of living allowances (COLA's) for all retirees violates contract rights, vesting rights in pensions, and other very substantial legal rights.

There are other provisions in the law which will be challenged but the foregoing have the major negative impact on PANJ members.

There are other "general" bases for challenging the new law including the legal prohibition against having two totally separate subject matters covered by one law.

Imp

cc: DIF Memo File  
File