



State Budget Bill Includes Significant Changes for School Districts

May 26, 2016

Today, the Budget Bill (2011 Wisconsin Act 32) was published, which results in an effective date of July 1, 2011. Included in the Budget Bill are significant changes to the rights of public employees, including employees of school districts. This Legal Update will provide a summary of these changes, and how they impact the changes already made under 2011 Wisconsin Act 10 (what was commonly known as the Budget Repair Bill). To avoid confusion in this Legal Update (we hope), we will use the term "Act 10" to describe the law now in effect and "the Budget Bill" to describe the amendments that were recently published and will be in effect.

Implementation Date for Employee Contributions to WRS

One of the most significant changes to Act 10 is the delay in the effective date of employee contributions to WRS. Under the Budget Bill, the WRS contributions required under Act 10 begin on the first day of a pay period after a specific date, to be determined by the Secretary of the Department of Administration. Thus, under the Budget Bill, employees who are subject to the WRS contribution requirements (non-represented employees and those union employees with expired collective bargaining agreements) will not make these contributions until the Department of Administration declares the effective date for those contributions.

This change only applies to those employers who are implementing WRS contributions as a result of Act 10. For those employers who have negotiated WRS contributions into their union contracts, or adopted personnel policies requiring employee contributions on a date certain, they should proceed with implementation of the date specified in the contract language or policy.

Based on this change in the implementation date of WRS contributions, there will be a gap between when Act 10 took effect (June 29, 2011) and the effective date of the WRS contributions as determined by the Department of Administration. We do not believe that the Legislature intended to create this gap or conflict in effective dates. We believe the legislative intent is clear; the amendments under the Budget Bill were meant to completely replace Act 10 and rescind the March 13, 2011 date specified in Act 10.

Other Changes to WRS Contributions and/or Eligibility

In addition to the new implementation date, the Budget Bill also makes several other significant changes to employee contributions to WRS and to those employees eligible for WRS benefits.

Pre-Tax Contributions: As part of the Budget Bill, the Legislature specifically revised the statute (§ 40.05(1)(b), Wis. Stats.) to provide that employee contributions to WRS will be made on a pre-tax basis by a reduction in salary. The Budget Bill describes the employee contributions as employer “pick-ups” under Internal Revenue Code Section 414(h)(2), which allows the deductions to be made on a pre-tax basis. Thus, school districts need not pass a resolution authorizing the employee contributions to be deducted on a pre-tax basis (although there is no harm to those districts who have already passed such a resolution). A resolution should still be adopted if the district intends to start WRS contributions, by contract language or policy, before the implementation date established under the Budget Bill.

Eligibility for WRS Coverage

The Budget Bill raises the minimum hours requirement for coverage under WRS. Any employee hired after July 1, 2011 must work at least two-thirds of what is considered full-time employment to be eligible for WRS enrollment. The Department of Employee Trust Funds (DETF) established 600 hours as the current threshold for WRS eligibility, so we anticipate this will increase to 1,200 hours, but DETF must establish the specific hours necessary to be eligible for WRS coverage.

Changes to the Bargaining Law

The Budget Bill made two small, but significant, changes to the language linking the wage increase to the Consumer Price Index (CPI-U). Under Act 10, an employer has a duty to bargain a wage increase with the union, but that wage increase is capped at the increase in the CPI. Act 10 also permitted the employer to negotiate a wage decrease if the CPI rate decreases. The Budget Bill clarifies that the link to the CPI is for represented employees only; in other words, an employer has flexibility in the wage increase it offers to non-represented employees and is not limited to the CPI increase. The Budget Bill also removed the language allowing an employer to decrease wages if the CPI decreases. The law now states that if there is a decrease or no change in the CPI, then the maximum an employer can offer in bargaining is a wage freeze.

Union Elections

Act 10 requires that an election be held every year by the WERC to determine whether employees still wish to be represented by the union. Act 10 contained a requirement that the first vote by union members must occur in April 2011. The Budget Bill changes this date to require that the first certification election must be held within three (3) months of the effective date of the Budget Bill, which means on or before October 1, 2011.

Conclusion

Both Act 10 and the Budget Bill make significant changes to the bargaining rights of school districts, as well as shifting the cost of some benefit programs to the employee. Absent further court litigation, it appears that school districts now have additional methods and options to reduce labor costs and balance their budgets. School districts face a significant amount of work as they transition many terms and conditions of employment from union contracts to personnel policies and employee handbooks. The attorneys at Buelow Vetter are available to assist in this transition, or to answer questions about the changes in benefits which have occurred under both Act 10 and the Budget Bill.

For more information on the changes found in the Budget Bill or Act 10, please contact Attorney [Matthew J.](#)

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This Legal Update is intended to provide information only on general compliance issues and should not be construed as legal advice. Please consult an attorney if you have any questions concerning the information discussed in this Legal Update.

In order to comply with Treasury Circular 230, we are required to inform you that any advice we provide in this Legal Update concerning federal tax issues is not intended or written to be used, and cannot be used, to avoid federal tax penalties or to promote, market, or recommend to another person any tax advice addressed herein.

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