



Pension Division Newsletter

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Sample Bylaw Guide

The Office of the State Auditor (OSA) released a Sample Bylaw Guide for use by defined-benefit lump-sum volunteer fire relief associations affiliated with a city fire department. The guide reflects current Minnesota statutes and relevant case law. Relief association boards of trustees can use it as a guide when developing, updating, and revising custom bylaws for their associations. The bylaw provisions within the guide are intended to assist a relief association in meeting its minimum statutory requirements, and to provide a framework for developing custom bylaws. The guide is not a substitute for legal advice. Please consult your legal counsel with questions about your bylaws.

MS Word and Adobe PDF versions of the guide are available on the OSA website at: <http://www.auditor.state.mn.us/default.aspx?page=20120208.000>.

Additional sample bylaw guides for different types of relief associations will also be available on the OSA website soon.

Age Discrimination and Pension Benefits

Volunteer fire relief associations should be cautious about implementing bylaw benefit provisions in which a member's age is the sole determinant for eligibility of the benefit. While relief associations have authority to require that members meet a minimum retirement age before drawing pension benefits, denying a benefit when a member reaches a certain age may be problematic.

As an example, consider the following: Joe and Sue begin firefighting service on the same day and separate from active service on the same day. The only difference is their age; Joe is 54 years old when he separates from active service, and Sue is 60. The relief association's bylaws prohibit volunteer firefighters over the age of 55 from accruing service credit. Therefore, under the relief association's bylaws, Joe will receive five more years of service credit than Sue; and age is the sole reason for the difference.

Denial of retirement benefits where the sole basis for the denial is age is illegal age discrimination under a ruling in a recent Eighth Circuit Court of Appeals case. *See EEOC v. Minnesota Dep't of Corrections*, 648 F.3d 910 (2011). Relief associations should consult their attorneys for guidance on how this case could affect their associations.

Deferred Interest: The Board-Set Return Option

Relief associations that elect to pay interest to deferred members have several options for determining how interest is to be paid. One of the options is to allow the relief association's board of trustees to set the interest rate, up to five percent. This interest type is only available to lump-sum and monthly/lump-sum combination plans.

Under this option, the relief association board of trustees determines the rate of interest for deferred members, between zero and five percent, compounded annually. Interest is payable following the date on which the municipality has approved the interest rate established by the board of trustees. Because interest is not payable until after the rate has been approved by the affiliated municipality, questions sometimes arise as to when a rate set by the board becomes effective. Answers to some frequently asked questions on this topic are provided below.

Q: Our relief association board of trustees approved an interest rate on March 1, and the city council approved the rate set by our board on March 15. Can the approved rate be effective retroactively back to January 1 of that year?

A: No. In general, relief association bylaw and benefit changes can only be adopted on a going-forward basis. The interest rate is effective after March 15.

Q: Our relief association board of trustees approved an interest rate on June 1, and the town board approved the rate on June 15. How do we show that the deferred interest rate changed mid-year when we complete our Schedule Form?

A: Currently, the Schedule Form only allows inputs of one deferred interest rate for each calendar year. Relief associations that change the deferred interest rate mid-year will need to calculate the actual interest that each deferred member is due, and manually enter the member's estimated liability amount into the Form. In this example, a deferred member would be eligible for six months of interest at one rate, and six months of interest at a second rate. Relief association trustees may wish to work with their accountants, auditors, or brokers to perform these calculations.

Q: Our relief association board of trustees plans to approve an interest rate change mid-year. Can we specify that the change will become effective at the beginning of the upcoming calendar year?

A: Yes. With proper documentation, a relief association board of trustees can specify that an approved interest rate will become effective on a future date. The bylaw amendment and relief association meeting minutes should clearly reflect the prospective effective date of the change. Having interest rate changes become effective on January 1 of the upcoming calendar year, for example, may simplify deferred interest calculations on the Schedule Form. Municipal approval of the interest rate must be obtained before the interest becomes payable.

For more information about deferred interest types and options, see our Statement of Position on this topic at <http://www.auditor.state.mn.us/default.aspx?page=20110527.005>.

New Statements of Position

The OSA has released two new Statements of Position: “Considerations When Making Benefit Changes” (<http://www.auditor.state.mn.us/default.aspx?page=20120224.000>) and “Volunteer Fire Departments: The Differences between Municipal Departments and Independent Nonprofit Firefighting Corporations” (<http://www.auditor.state.mn.us/default.aspx?page=20120224.003>).

The new Statements set forth five basic steps that relief associations should follow when considering a benefit level change, and explain some differences between municipal fire departments and independent nonprofit firefighting corporations.

Working Group & Investment Study Group Updates

The final 2011/2012 Volunteer Fire Relief Association Working Group meeting was held on February 7. Working Group members adopted draft language to clarify deferred service pension eligibility requirements. The Group also agreed on language that establishes defaults for how interest and additional investment performance will be credited to deferred members, unless a relief association’s bylaws specify a different crediting method. The Group conducted a final review of proposed technical changes and agreed upon final language in the Working Group bill.

Last year, the Working Group bill and Investment Study Group bill were not acted upon because the Legislative Commission on Pensions and Retirement, a legislative body that first hears pension bills, convened quite late and did not have time to hear the bills. The Commission has heard testimony this year on the Investment Study Group bill, and is scheduled to hear both the 2011 and the 2012 Working Group bills at its meeting on February 28. We will continue to keep you updated on the progress of these bills as they make their way through the legislative process.

Additional information about the Working Group, including copies of the 2011 and 2012 bills, can be viewed at <http://www.auditor.state.mn.us/default.aspx?page=reliefworkinggroup>. Information about the Investment Study Group, and a copy of the bill, can be viewed at: <http://www.auditor.state.mn.us/default.aspx?page=20100826.001>.

Reminder to Report Evidence of Misconduct

Public accountants performing an audit of a political subdivision or a local public pension plan must report to the OSA the discovery of evidence during the audit that points to nonfeasance, misfeasance, or malfeasance on the part of an officer or employee of the entity being audited.

The report must be made “promptly” to both our office and the appropriate county attorney. "Prompt" reporting should be done prior to the routine filing of the relief association’s audit with the OSA. Especially in cases where evidence of fraud is discovered, the OSA is available to assist the accountant if requested. The accountant is also required to provide the OSA and the county attorney with a copy of the completed audit report.

More information on this mandatory reporting requirement can be viewed at: <http://www.auditor.state.mn.us/default.aspx?page=reportingfinancialconcerns>.

OSA Website Changes

Updates have been made to the OSA website (www.auditor.state.mn.us) so that forms and documents for volunteer fire relief associations are easier to locate. Now, under the “Forms”

menu option, you can select “Pension Forms” to view current relief association reporting forms and helpful resources for completing the forms.

Under the “For Local Officials” menu option, choose “Pension Documents” to access relief association bylaw guides, the selected relevant statutes booklet and summary, and fire and police state aid amounts.

Both web pages also contain links to other resources available on the OSA website, such as Pension Newsletters, Working Group information, and answers to Frequently Asked Questions.

If you have questions please contact us:

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