

Furloughs

Issue

Furloughs can affect how pensions are calculated. Current law mitigates the pension impact of furloughs on some employees. It adjusts a retiring employee's benefit calculation to account for compensation the employee would have earned had it not been for the furlough.

The Law Enforcement Officers' and Fire Firefighters' Plan 2 Board has requested the SCPP study this issue, and consider extending the mitigation provisions to other members not currently covered.

Policy Highlights

- ❖ Not all furloughs are covered by recent legislation.
 - ◇ Some furloughs have taken place prior to the effective date of the recent bills.
 - ◇ Furloughs may continue after mitigation provisions expire.
- ❖ Not all members are covered by recent legislation.
 - ◇ Mitigation provisions do not necessarily apply to all plans or to both state and local members of those plans.
 - ◇ Not all members are experiencing furloughs, and many are expressly exempt from state-mandated furloughs.
- ❖ Not all cost-reduction measures meet the definition of furloughs for the purpose of mitigation provisions.
 - ◇ For example, across-the-board cuts and foregone cost-of-living-adjustments are not covered.
- ❖ Lawsuits and grievances have been filed to stop the furloughing of employees covered by collective bargaining. The decisions in these cases have been mixed, and some are still pending.

Next Steps

- ❖ Nothing at this time. This option may be appropriate if policymakers feel:
 - ◇ The issue has already been addressed by the Legislature, and the current mitigation provisions should be allowed to expire.

- ◇ Additional time would allow the situation to develop more fully.
- ❖ Direct staff to prepare options. This option may be appropriate if members feel the current provisions are not adequate or not applied consistently. Sample options include:
 - ◇ Extending the mitigation provisions beyond the current biennium.
 - ◇ Expanding the mitigation provisions to members and systems not currently covered.
 - ◇ Addressing the impacts from other types of cost-reduction efforts.

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Furloughs

Current Situation

In Brief

Current Situation

Furloughs can affect how pensions are calculated. Current law mitigates the pension impact of furloughs on some employees. The LEOFF 2 Board asked the SCPP to study the issue and consider extending the mitigation provisions to other members and systems.

Member Impact

All members of state-administered retirement systems could potentially be affected.

State and local government employees are being furloughed in response to budget pressures. Furloughs can affect how employee pensions are calculated. Current law mitigates the pension impact of furloughs on some employees. It adjusts a retiring employee's benefit calculation to account for compensation the employee would have earned had it not been for the furlough.

In June 2010, the Law Enforcement Officers' and Fire Fighters' Plan 2 (LEOFF 2) Board wrote to the SCPP and requested the SCPP study furloughs, and consider extending the mitigation provisions to other members not currently covered.

Legislative History

In the 2009 Legislative Session, a non-SCPP bill (SB 6157) was enacted to mitigate the effect of furloughs on pensions for some members of the retirement systems during the 2009-11 Biennium. The SCPP was briefed on that bill at the September 2009 hearing.

In the 2010 Legislative Session, another non-SCPP bill (ESSB 6503) was passed. This bill mandated cost-reductions within state agencies, including salary reductions and/or furloughs. Included in that bill were provisions to mitigate the impact of furloughs for some members of systems that weren't covered in the 2009 bill.

Not all public employees were covered under the combined effect of these bills. The mitigation provisions only addressed the impact of furloughs on a retiring employee's salary average.

Background

What Are Furloughs?

Furloughs are authorized unpaid leaves of absence, often synonymous with the terms "temporary layoffs" or "unpaid vacation."

It is important to distinguish between voluntary furloughs, furloughs that are mandated at the agency or local government level, and furloughs that are mandated by the state. As discussed below, the mitigation provisions and exemptions will not always apply evenly.

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How Furloughs Can Impact Pension Benefits

Pension benefits are calculated as:

(Percentage multiplier) X (years of service) X (average salary)

Furloughs can impact a member's pension benefits by affecting salary average or service credit. Members may be able to minimize or avoid these impacts by working longer before retirement, or purchasing additional service credit at retirement.

Furloughs can impact pensions by affecting salary average or service credit.

Employees within a few years from retirement are more likely to see their salary average affected.

Full time employees are not likely to see their service credit affected.

Salary Average

Salary average varies by plan, but is generally based on the member's highest consecutive two or five years of employment. If an employee is furloughed during the two or five year span used to calculate salary average, that employee's pension benefits may be reduced.

For most employees, salary is highest near retirement. Employees who are furloughed five or more years before retirement are less likely to have their pensions reduced.

Service Credit

Members are not likely to lose service credit due to furloughs. For example, a full-time employee subject to the ten shutdown days included in ESSB 6503 would not lose service credit.

Service credit is based on hours worked, and varies by plan. For example, to earn one year of service credit:

- ❖ A member of the Public Employees' Retirement System (PERS) 2/3 must work at least 90 hours per month, for twelve months.
- ❖ A member of Teachers' Retirement System (TRS) 2/3 must begin working in September, work at least 810 hours, and must work at least nine months of the school year.

Partial service credit is available, and varies by plan. Generally, if a plan member has worked at least one hour in a month, that member will receive partial service credit for that month. Depending on the length of time an employee is furloughed, it is possible that an employee could receive reduced service credit.

Employers may be able to minimize or avoid lost service credit through careful scheduling.

Current Law

If upon retirement it is determined that a furlough will affect a covered member's average salary, then the Department of Retirement Systems (DRS) will adjust the calculation to include any compensation the member would have earned if the member had not been subject to furlough.

If a retiring employee's salary average is affected by furloughs, DRS will adjust the salary average to include compensation the member would have earned if not for the furlough.

The member does not actually receive compensation for the time off, and the employer only reports the actual hours earned by the member. No employer or employee contributions are collected for the furloughed time. Please see Appendix B for more information on how recent legislation combined to create current law.

How can this impact the system?

Adjusted benefits are calculated in part based on salary that was not earned and time that was not worked. The adjustment is made after-the-fact, and since no contributions are made to the system for that time, the result is a cost that must be absorbed by the system.

No contributions are made for the furloughed time. Resulting costs must be absorbed by the system.

The cost to the system will develop over time, as members retire. Overall, the total cost will depend on how many people utilize the salary average adjustment, how many furlough hours affect their salary average, and whether those furloughs are covered by the adjustment provisions. In 2009, OSA prepared a fiscal note for the first of the two recent furloughs bills (SB 6157, 2009 c 430). The estimated 25 year costs for the salary average adjustment could range as follows:

- ❖ Total employer low estimate: \$47 million (rounded to nearest million)
- ❖ Total employer high estimate: \$185 million
- ❖ Total employee low estimate: \$18 million
- ❖ Total employee high estimate \$72 million

The fiscal note for the second of the furloughs bills (ESSB 6503, 2010 c 32) states that expanding the salary average adjustment to the other systems named in the bill will not add to the costs already anticipated under SB 6157.

To view these fiscal notes, please visit OFM's website:

<https://fortress.wa.gov/ofm/fnspublic/>

For more information on recent legislation, please see Appendix B.

The salary average adjustment covers all members of PERS, as well as state employees of TRS, PSERS, LEOFF, and WSPRS.

Who does this apply to?

The salary average adjustment covers all members of PERS, as well as state employees of TRS, Public Safety Employees' Retirement System (PSERS), LEOFF, and Washington State Patrol Retirement System (WSPRS).

As noted above, even though all employees in the named categories are covered, the only employees who will actually utilize the adjustment are those who are furloughed within the salary average period used for calculating their benefits.

What types of reductions are covered?

The salary average provision applies to compensation foregone as a result of reduced work hours, mandatory and voluntary leave without pay, and temporary layoffs that the employer certifies are an integral part of that employer's cost reduction efforts.

Only compensation reductions that are accompanied by reduced work hours (e.g. across-the-board cuts) are included. Other cost-reduction efforts, such as compensation lost due to cancellation of a cost-of-living increase, are not included.

To be included, furloughs must be compensation reductions accompanied by reduced work hours that the employer certifies as an integral part of cost reduction efforts.

Furthermore, DRS will not compensate for furloughs that are not certified as an integral part of an employer's expenditure reduction efforts. In other words, if an employee were to take reduced work hours as part of a voluntary phased retirement, the lost compensation would not be included. Current law does not address service credit lost due to furloughs.

When does this apply?

The salary average adjustment only applies to furloughs taken during the 2009-11 Biennium. It does not cover furloughs taken prior to that window, or any that may be taken after it.

Who is being furloughed?

Furlough policies in Washington continue to develop. Additional data will be available later this year. However, complete data on voluntary furloughs is difficult to obtain without polling each city, county, and district individually. Please see Appendix A for more information.

Furlough policies typically exempt public health, safety, and regulatory personnel. However, this is not always the case.

Who is exempt from furloughs?

Few are categorically exempt from voluntary furloughs, or furloughs mandated at the agency and local government level. In practice these

furlough policies typically exempt public health, safety, and regulatory enforcement personnel.¹

For state-mandated furloughs under ESSB 6503, the bill contains a list of exemptions from the cost-reduction efforts in the bill, for example, including personnel in public safety, health, and revenue generating fields. Please refer to the bill for the full list.

The cost-reduction efforts named in ESSB 6503 are directed at state agencies. Though local government employees may be indirectly impacted, they are exempt from state-mandated furloughs in the bill.

¹ While typical, this is not always the case. For example, commissioned officers of the Washington State Patrol are exempt from state-mandated furloughs. However, the chief and some commissioned officers in the executive staff took voluntary furlough time.

Legal action

Lawsuits and grievances have been filed to stop the furloughing of employees covered by collective bargaining, at both the state and local government levels. The outcomes of these suits may affect both the total amount of employees furloughed and the categories of personnel subject to furlough. Please see Appendix C for more information on these cases.

Policy Questions

As a threshold question, policy makers may wish to ask whether employee pension benefits should be shielded from reductions due to short-term cost-reduction efforts. If so, policymakers may wish to ask several additional questions:

- ❖ Which employees should be covered?
- ❖ Which impacts should employee benefits be shielded from?
- ❖ How long should mitigation provisions be in effect?
- ❖ Who should pay for the cost of the salary adjustment provisions?

The salary average adjustment does not apply to all members of all systems. However, not all members and systems are experiencing furloughs.

Which employees should be covered?

The salary average adjustment does not apply to the following members and systems:

- ❖ Local government employees of TRS, PSERS, and LEOFF.
- ❖ Employees in SERS, VFFRO, and the two closed judicial plans.

Thus far, staff has found very few of these members experiencing furloughs. Of those few, none are state-mandated. For more information on who is being furloughed, please see Appendix A.

Which impacts should employee benefits be shielded from?

The salary average adjustment does not apply to all impacts of cost-reduction efforts on pensions.

The salary average adjustment does not take into account potential lost service credit due to furloughs. Also, furloughs are not the only cost reduction effort that could affect employee benefits. Others, such as across-the-board cuts, can affect employee benefits, but are not considered for the salary average adjustment.

How long should mitigation provisions be in effect?

The salary average adjustment is limited to furloughs taken in the 2009-11 Biennium. Adjustments will not be applied for furloughs taken before or after that window.

Some local governments budget on a calendar year, rather than a fiscal year, and some of these local governments began taking furloughs prior to the beginning of the 2009 fiscal year -- the effective date of the mitigation provisions. As such, employees furloughed between January 1, and June 30, 2009 may see a reduction in pension benefits due to those furloughs.

By all predictions, the budget will not improve significantly for several more years. It is likely that furloughs, and other cost-reduction efforts, will continue or be renewed for at least the next biennium. If furloughs are utilized beyond the 2009-11 Biennium, then anyone furloughed within two to five years of retirement could see a reduction in benefits.²

² See "Salary Average," above.

Who pays for the cost of the provisions?

Salary average adjustments are not directly paid for by the members receiving the benefits. That cost is passed to all members and employees.

Furloughs are enacted as a short-term cost-saving measure. However, salary average adjustments result in a long-term cost to the retirement system.

That cost is not directly paid by the members receiving the benefits. Since no contributions are collected for time the employee was furloughed, the cost of salary average adjustments is absorbed by the system. Once absorbed, the cost is rolled into future contribution rates. The end result being that much of the cost of the adjustments is paid for by all members and employers.

Other States

As of this writing, the situation is still unfolding in many states. For example, governors and agency heads in many states have proposed furlough plans that have not yet been enacted or finalized.

Of Washington's peer states:

- ❖ Two states (IA, OH) allow furloughed members to buy back lost time.
- ❖ Another state (CO) has a buy back provision in law, but it only applies to furloughs taken from July 1, 2002 to June 30, 2004.
- ❖ One state (CA) will not allow furloughs to impact salary average, service credit, or other benefits.³

³ This is based on the CalPERS website, which states: "At this time, it is our understanding that the State furloughs and pay reduction will not impact the amount used to calculate your retirement, your service credit towards retirement, or your health or dental benefits."

<http://www.calpers.ca.gov/index.jsp?bc=/about/press/news/furlough/faq-retirement-health-benefits.xml>

Legal Action in Other States

Lawsuits have been filed in several states, to stop or modify enacted furlough plans. Some have been decided, and many are still pending. Please see Appendix C for more information.

Conclusion

Furloughs may impact pensions by affecting salary average and service credit. The full extent of impacts from furloughs cannot be determined at this time. The impact will depend on:

- ❖ The number of employees furloughed.
- ❖ The amount and timing of reduced hours for each employee.
- ❖ When those employees retire.

Lawsuits and grievances have been filed to stop the furloughing of employees subject to collective bargaining, both in Washington and in other states. The decisions in these cases have been mixed, and some are still pending.

Policy makers may wish to determine whether employee pension benefits should be shielded from reductions due to short-term cost-reduction efforts such as furloughs.

If so, policy makers may wish to consider:

- ❖ Which employees should be covered.
- ❖ Which impacts employee benefits should be shielded from.
- ❖ How long any mitigation provisions should be in effect.
- ❖ Who should pay for the cost of any mitigation provisions.

Next Steps

- ❖ Nothing at this time. This option may be appropriate if policy makers feel:
 - ◇ The issue has already been addressed by the Legislature, and the salary adjustment provision should be allowed to expire.
 - ◇ Additional time would allow the situation to develop more fully.
- ❖ Direct staff to prepare options. This option may be appropriate if members feel the protections are not adequate or not applied consistently. Sample options include:
 - ◇ Extending the salary adjustment provision beyond the current biennium.
 - ◇ Expanding the salary adjustment provision to members and systems not currently covered.
 - ◇ Addressing other impacts from cost-reduction efforts.

Appendix A

Who is being furloughed?

Appendix B

Recent furlough legislation from the 2009 and 2010 sessions.

Appendix C

Legal actions in Washington and other states.

Correspondence

- ❖ Representative Seaquist, received September 14, 2010.
- ❖ Kelly Fox, Chair, LEOFF 2 Board, received June 17, 2010.

- ❖ Senator Pridemore, received September 11, 2009.
- ❖ Carol Conley, Human Resources Manager, City of Bremerton, received July 22, 2009.

Additional Information

The Office of Financial Management maintains a furloughs web page, which contains information about ESSB 6503, closure dates, and tables listing which agencies are utilizing alternative plans:

<http://www.ofm.wa.gov/layoff/default.asp>

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Appendix A

Who Is Being Furloughed?

Furlough policies in Washington continue to develop. With the passage of ESSB 6503, state agencies must reduce employee compensation as detailed in the omnibus appropriations act. To meet those reductions, agencies can choose between a salary reduction plan (with approval from Office of Financial Management (OFM), and may include furloughs) or full agency closures on specific dates listed in statute.

As of this writing, OFM reports¹ that:

- ❖ Fifty-two state agencies have chosen to utilize the specific closure dates mentioned in the bill.
- ❖ Thirty-nine state agencies have submitted an alternate plan with OFM.
- ❖ Five state agencies are wholly exempt from the bill.²

For agencies without an alternate plan, the first three furlough days have already taken place on July 12, August 6, and September 7, 2010.

ESSB 6503 does not require furloughs for local government entities. However, some state agencies and local governments began furloughing employees at least as far back as January of 2009.

Data on local government furloughs is difficult to obtain without polling each city, county, and district individually. The Association of Washington Cities is preparing data on city government furloughs, but it will not be available until October. Some information can be obtained from news articles, but the reader should be cautioned that the articles may not always reflect final action. For example, as noted below, some agencies have enacted furloughs, only to have those furloughs repealed through legal action.

The following information shows the limited information staff was able to obtain regarding furloughs of local government employees.

¹ For more information see "Additional Information" above.

² This does not include individual job classifications that may be exempt regardless of agency.

PERS

Precise numbers are not yet available, however news articles and constituent correspondence (attached) indicate that at least some PERS employees in cities and counties are experiencing furloughs.

TRS

The Office of the Superintendent of Public Instruction is not tracking furloughs for teachers. However, staff contacted four school districts (Seattle, Tacoma, Spokane, and North Thurston), and each stated that its employees were not subject to furloughs. These districts did note they are experiencing other cost-reduction efforts, such as losing in-service or Learning Improvement Days, and freezing step increases.

SERS

The four school districts noted above stated that classified staff were not subject to furloughs.

At least one school district has furloughed its classified staff for 20 days. However, the union representing the classified staff filed a grievance against the school district. As a result, the district was ordered to restore the 20 days and provide back pay and benefits. Please see Appendix C for more information.

PSERS

The state Department of Corrections is not aware of any PSERS members subject to voluntary furloughs at the local government level. However, to confirm the impact on local government members of PSERS would require contacting each county and city (other than Seattle and Tacoma).

LEOFF

The LEOFF 2 Board has not been able to provide data regarding the furloughing of LEOFF members. Police and fire are typically exempt from furloughs, and staff is not aware of furloughs encompassing police or fire.³

³ For clarification, in a recent PERC case, the petitioner asserted that the imposition of a county furlough program on fire fighters was a violation of employee rights. However, to date, no police or fire fighters in that county have been furloughed. Please see Appendix C for more information.

Volunteer Fire Fighters and Reserve Officers (VFFRO)

Volunteer firefighters typically do not collect a salary, and, as such, have no salary to be reduced via furloughs. In addition, Fire fighters are exempt from state-mandated cost reductions under EESB 6503 (see "Statewide Cost Reduction," above).

Judicial Plans

Judges are exempt from state-mandated furloughs under Article XXVIII of the State Constitution. Under Article XXVIII, salaries for elected officials, including judges, are set by an independent commission, and cannot be reduced.

Appendix B

Recent Legislation

In the 2009 and 2010 Sessions, the Legislature considered three non-SCPP bills. Each bill contained a provision to mitigate the impact of furloughs on employee pension benefits, but each bill would apply that same provision in different ways. Two of the three bills passed and are now current law.

Salary average adjustment

All three bills contained a provision affecting salary average for purposes of calculating pension benefits. This provision worked as detailed in the main body of the paper: If upon retirement it is determined that a furlough will affect a member's average salary, then DRS will adjust the calculation to include any compensation the member would have earned if the member had not been subject to furlough. The member does not actually receive compensation for the time off, and the employer only reports the actual hours earned by the member.

Salary average adjustment provision applied differently

All three bills differed in terms of:

- ❖ Which plans were covered.
- ❖ Which employees (state and/or local) within those plans were covered.
- ❖ What timeframe was covered.

The three bills shared many similarities in subject and title, making it difficult to distinguish them. The bill titles in quotes are nicknames created for this paper, and are intended only to assist in comparison. Please refer to the bill number for the official full and short titles.

"PERS Only"

Senate Bill 6157 passed in 2009 (2009 c 430), and applied the salary average adjustment provision to PERS state and local employees. This bill covered furloughs taken during the 2009-11 Biennium only.

"Statewide Cost Reduction"

Engrossed Substitute Senate Bill 6503 passed in 2010 (2010 c 32), and applied the salary average adjustment provision to state employees in TRS, PSERS, LEOFF, and WSPRS.¹ Local government employees in those systems were not included.

ESSB 6503 applied the salary average adjustment provision to furloughs taken during the 2009-11 Biennium only.

¹ This bill contained many provisions. Only the furlough mitigation provisions are addressed here.

"PERS Calendar Year"

Senate Bill 6742 was considered in the 2010 Session, but did not pass. For PERS state and local employees, this bill would have expanded the timeframe the salary average adjustment provision was in effect: In addition to furloughs taken during the 2009-11 Biennium, SB 6742 would have also covered furloughs taken between December 31, 2008, and the start of the fiscal year.

Which Plans?		
	PERS	LEOFF, TRS, PSERS, WSPRS
"PERS Only"	X	
"Statewide Cost Reduction"		X
"PERS Calendar Year"	X	

State or Local?		
	State	Local
"PERS Only"	X	X
"Statewide Cost Reduction"	X	
"PERS Calendar Year"	X	X

What Timeframe is Covered?		
	Fiscal Biennium 09-11	12/31/2008 - 6/30/2009
"PERS Only"	X	
"Statewide Cost Reduction"	X	
"PERS Calendar Year"	X	X

Which Bills Passed?		
	Passed	Did Not Pass
"PERS Only"	X	
"Statewide Cost Reduction"	X	
"PERS Calendar Year"		X

Appendix C

Legal Actions

Washington State Government

The Washington Federation of State Employees (Federation) filed for a preliminary injunction on June 25 of this year.¹ The requested injunction would have stopped the state-mandated (under ESSB 6503) furloughing of employees represented by the Federation until the Federation's grievance and unfair labor practice complaint could be resolved.²

Among other things, the Federation's complaint alleged:

- ❖ Not allowing the Federation to bargain over the impact of furloughs was a violation of the collective bargaining agreement.
- ❖ A unilateral decision to furlough workers must be justified by the budgetary shortfall, but the current furlough plan will save substantially more than is required to meet that shortfall.
- ❖ The list of exemptions in ESSB 6503, and the ability of agencies to use alternative cost reduction options resulted in insufficient notice of which workers would be furloughed.

On July 2, the court denied the Federation's motion for a preliminary injunction, and agencies began taking furloughs as scheduled.

¹ *Washington Federation of State Employees v. State of Washington* (10-2-01395-1).

² For clarification, ESSB 6503 contains a section (Section 4) on collective bargaining. However, this section only determines the parties involved in negotiating the impact of furlough days or alternative cost-reduction plans.

Washington Local Government

Two employee unions filed grievances against King County in response to furloughs. Both cases,³ were decided in favor of the union, nullifying any remaining furloughs and requiring the county to reimburse those employees for any furloughs taken.

A third case was filed on behalf of classified staff at a school district. The district was ordered to restore the 20 furlough days and pay back pay and benefits.⁴

A fourth case was filed on behalf of fire fighters. However, participation in the furlough program is voluntary, and according to the City of Vancouver, no police or fire fighters have been furloughed to date. Final action on this case is still pending.⁵

³ *Amalgamated Transit Union, Local 587 v. King County (22254-U-09-5679) and Technical Employees Association v. King County (22175-U-09-5658).*

⁴ *Teamsters Local Union 252 v. Griffin School District (22170-U-08-5653).*

⁵ *International Association of Fire Fighters, Local 452 v. City of Vancouver (22845-U-09-5831).*

Other States

Lawsuits have been filed in several states to stop or modify enacted furlough plans.

Tracking these lawsuits is difficult for three reasons. First, the timeline of events is complex and continually unfolding. Second, most lawsuits are near the beginning of the legal process, and have yet to be resolved by the court.

Finally, multiple lawsuits can be filed against the same statute or executive order. Similar suits can be filed by different entities (e.g. different employee groups can file suit separately), or on behalf of different employees (e.g. those who are and are not represented by a union.) The court may eventually join these suits, but at filing there can be more than one suit alleging the same thing.

Due to this complexity, only three lawsuits (one per state) are discussed here:

- ❖ Kentucky, because it is very similar to the lawsuit against Washington State detailed above.
- ❖ Maryland, because it is a federal case that has been resolved, pending further appeal.
- ❖ California, because it illustrates the complexity involved.

Kentucky

An employee union filed for a temporary injunction to stop the mandatory furloughs, pending the resolution of the case. The court denied the motion, and furloughs have begun as scheduled. The overall case regarding the validity of the furlough program is still pending.

Maryland

In the original case, the trial court held that furloughing employees was a violation of a collective bargaining agreement (CBA), and

constituted an unlawful impairment of contracts under Article I, Section 10 of the US Constitution. On June 23, a federal Court of Appeals overturned the trial court, and ruled in favor of the county.⁶

The trial court focused on many things, including allegations that the county had made conflicting statements. However, the crux of the appeal was the three-part test of whether a law violates the contracts clause. Courts inquire:

- ❖ Was there an impairment of a contract?
- ❖ Was the impairment substantial?
- ❖ If so, was the impairment reasonable and necessary (i.e. justified under police powers)?

If the answer to all three is yes, then there is a violation of the contracts clause.

On appeal, the Court of Appeals stated that furloughs were not an impairment of the CBA, and therefore not a violation of the contracts clause. The case turned on two county ordinances that apply to all employees whose contracts are collectively bargained.

The first ordinance states that county employees may be furloughed. The second states that the relevant county laws apply unless the CBA specifically says otherwise. The CBA contained no exemption from furloughs. In fact, the court noted that CBAs in previous years included exemption from furloughs, but that provision had been dropped in the mid-1990s.

Therefore, the court ruled that no impairment had taken place, and therefore was not a violation of the contracts clause.

⁶ *Fraternal Order of Police v. Prince George's County, Maryland* (608 F.3d 183).

California

Many lawsuits have been filed in California. The following timeline illustrates the impact of just one of those suits, filed on behalf of the State Compensation Insurance Fund (SCIF):

- ❖ December 19, 2008.
 - ◇ Executive Order S-16-08, requires two furlough days per month, from January 1, 2009, to June 30, 2010, regardless of funding source.
- ❖ July 1, 2009.
 - ◇ Executive Order S-13-09, amends the furlough plan to three days per month.
- ❖ August 31, 2009.

- ◇ State Superior Court judge rules that under section 11873 of the state insurance code the SCIF is not subject to other state laws of general applicability. Thus, employees of the SCIF are exempt from furloughs, and those employees must be given back pay, plus interest.
- ❖ June 30, 2010.
 - ◇ Amended furlough plan ends.
- ❖ July 28, 2010.
 - ◇ Executive Order S-12-10, requires three furlough days per month, until the 2010-11 Fiscal Year budget is in place and there is enough cash in place for the state to meet certain obligations.
 - ◇ In addition to exemptions for public health and safety, employees of the State Compensation Insurance Fund are exempt.

Wallis, Keri

From: Seaquist, Rep. Larry
Sent: Tuesday, September 14, 2010 3:48 PM
To: 'Elaine Valencia'; Rolfes, Rep. Christine; Appleton, Rep. Sherry; Kilmer, Sen. Derek; Sheldon, Sen. Timothy; Finn, Rep. Fred; Haigh, Rep. Kathy; Smith, Matt
Cc: Conway, Rep. Steve; Schoesler, Sen. Mark; Rose, Terra
Subject: RE: SB 6157 and SB 6503

As a member of the Select Committee, I ask that the communiqué below from Bremerton Mayor Patty Lent be included in the communications to the Select Committee on Pension Policy and that her request be discussed at the next meeting of the SCPP Executive Board.

Thank you,
Larry

Rep. Larry Seaquist
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From: Elaine Valencia [mailto:Elaine.Valencia@ci.bremerton.wa.us]
Sent: Tuesday, September 14, 2010 1:35 PM
To: Rolfes, Rep. Christine; Appleton, Rep. Sherry; Kilmer, Sen. Derek; Seaquist, Rep. Larry; Sheldon, Sen. Timothy; Finn, Rep. Fred; Haigh, Rep. Kathy
Subject: SB 6157 and SB 6503

Mayor Patty Lent asked me to send this information to you:

Below are the two Senate Bills that were passed regarding reduction in compensation and their effect on an employee's retirement. We are requesting that the legislature consider extending both SB 6157 and SB 6503 through the 2012 biennium.

Due to budget constraints the City of Bremerton may need to negotiate reductions in pay or Furloughs during this time period. It is very difficult to get unions to agree to the reductions if it is going to affect their member's retirement benefit.

Also, we are requesting that SB 6503 be amended to include LEOFF employees who work for local governments. The City of Bremerton has employees whose retirement benefits may be reduced because of reduction in salaries or furloughs that were taken as a part of the City's effort to reduce expenditures.

Senate Bill (SB) 6157 was passed by the 2009 legislature. It allowed any compensation forgone by a Public Employees' Retirement System (PERS) member, due to a furlough during the 2009-2011 biennium, to be included in the average final compensation calculation of that member's retirement benefit. The qualifying factors are a reduction in hours *and* salary and the furlough must have been an integral part of the employer's efforts to reduce expenditures.

SB 6503 was passed by the 2010 legislature and added members of the Teachers' Retirement System (TRS), Washington State Patrol Retirement System (WSPRS), Law Enforcement Officers' and Fire Fighters' Retirement System, (LEOFF), and Public Safety Employees' Retirement System (PSERS) who work for State Agencies or Institutions of Higher Education.

Thank you very much for your help on this important issue.

Elaine Valencia
Executive Asst. to the Mayor
City of Bremerton
345 6th Street, Suite 600
Bremerton WA 98337
360 473-5266 office
360 473-5883 fax
elaine.valencia@ci.bremerton.wa.us



STATE OF WASHINGTON

**LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS'
PLAN 2 RETIREMENT BOARD**

P.O. Box 40918 • Olympia, Washington 98504-0918 • (360) 586-2320 • FAX (360) 586-2329

June 14, 2010

RECEIVED

JUN 17 2010

Office of
The State Actuary

Select Committee on Pension Policy
C/O The Office of the State Actuary
Post Office Box 40914
Olympia, Washington 98504-0914

Dear Honorable Members of the Select Committee on Pension Policy:

On behalf of the Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board (LEOFF 2 Board), I would like to thank you for the cooperative working relationship we have shared during the past 7 years and look forward to a similar partnership in the upcoming year.

I would like to bring two topics to your attention as you begin preparation for the 2010 interim. It is our hope that the Select Committee on Pension Policy (SCPP) and the LEOFF 2 Board can work cooperatively on these issues. I have provided a brief summary of each topic for your reference:

Purchase of Annuity

Under current law, Plan 3 members (TRS, PERS & SERS) can purchase an annuity out of the comingled trust fund. Plan 2 and Plan 3 members may purchase additional service credit at the time of normal retirement by paying the actuarial cost of the additional service, but they are limited to five years. Members who have assets in excess of the purchase cost for the maximum five years could benefit from another avenue to invest those assets.

Furloughs

The Legislature passed a bill in the 2009 session that provided retirement protections for state and local government PERS employees who take unpaid leave of absences as a means of addressing budget challenges. Public employees who are members of other retirement systems could also benefit from similar protection.

A member who either voluntarily or involuntarily takes unpaid leave as a result of the current economic conditions may have their retirement benefit adversely affected if it occurs during their final average salary period.



Select Committee on Pension Policy

June 14, 2010

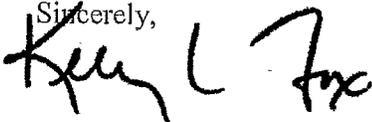
Page 2

The LEOFF 2 Board also would like to respectfully request that the legislative sponsorship of any bills that are jointly recommended by the Board and the SCPP to the Legislature for the 2011 legislative session be coordinated between the Chair of the LEOFF 2 Board and the Chair of the SCPP.

Please feel free to contact me or Steve Nelsen, LEOFF 2 Board Executive Director, should you have any questions or would like additional information. Steve can be reached at (360) 586-2320 or steve.nelsen@leoff.wa.gov, and I can be contacted at (360) 943-3030 or pres@wscff.org.

We would be happy to meet with you to discuss these topics at an upcoming SCPP or LEOFF Plan 2 Retirement Board meeting. Thank you for your consideration and we look forward to working with you.

Sincerely,

A handwritten signature in black ink that reads "Kelly L. Fox". The signature is written in a cursive style with a large, stylized "K" and "F".

Kelly Fox, Chair

cc: Matt Smith, State Actuary



Washington State Senate

Olympia Office:
PO Box 40449
Olympia, WA 98504-0449

Senator Craig Pridemore
49th Legislative District

(360) 786-7696
FAX: (360) 786-1999
E-mail: pridemore.craig@leg.wa.gov

Members

Select Committee on Pension Policy
c/o Matt Smith, State Actuary
PO Box 40914
Olympia, WA 98504-0914

September 10, 2009

Dear Members of the SCPP,

I understand that the SCPP has a work session scheduled for September 15 to discuss the implementation of SB 6157, passed in the 2009 legislative session. I am writing to convey my support for a model that final compensation for state employees that is used to calculate a retirement benefit for a PERS member would not be affected by salary reduction that are due to reduced hours, leave without pay or furloughs taken as part of an employer's effort to reduce expenditures during the 2009-2011 biennium. I request that this issue receive particular attention related to local government.

Many local government employees were also required to take salary reductions in order for local governments to balance their budgets, as well. Local governments' fiscal year is not the legislative fiscal year of July 1 to June 30, but rather the calendar year, January 1 to December 31. This benefit should also be available to local government PERS members, effective January 1, 2009. I would like to request the support of the SCPP to include local government PERS members on the calendar year fiscal year, effective January 1, 2009.

I would be pleased to prime sponsor such a bill. Thank you very much for your consideration.

Best regards,

A handwritten signature in cursive script that reads "Craig A. Pridemore".

Craig A. Pridemore
State Senator
49th Legislative District

Wallis, Keri

From: Smith, Matt
Sent: Thursday, July 23, 2009 7:15 AM
To: Seaquist, Rep. Larry
Cc: Conway, Rep. Steve; Futrell, Oriana; Harper, Laura; Gutierrez, Aaron
Subject: RE: Senate Bill 6157

Rep. Seaquist,

I agree with Ms. Conley's interpretation of the bill and how it would impact PERS employees with furlough days prior to 7/1/2009. The bill was introduced late in session and I don't recall any discussion on this particular topic, but can't say for sure. The SCPP will receive a full briefing on this legislation at their September meeting. In the meantime, please let us know if you need additional information.

Matt

-----Original Message-----

From: Seaquist, Rep. Larry
Sent: Wednesday, July 22, 2009 9:04 AM
To: Smith, Matt
Cc: Conway, Rep. Steve; Futrell, Oriana
Subject: FW: Senate Bill 6157

Matt,

Can you offer any background on this query from Bremerton please? I'll go see her to learn more but I suspect this is not a new concern.

Thank you,
Larry

-----Original Message-----

From: carol.conley@ci.bremerton.wa.us [mailto:carol.conley@ci.bremerton.wa.us]
Sent: Tuesday, July 21, 2009 4:16 PM
To: Seaquist, Rep. Larry
Subject: Senate Bill 6157

HOUSE INTERNET E-MAIL DELIVERY SERVICE

TO: Representative Larry Seaquist

FROM: Ms. Carol Conley

STREET ADDRESS:

345 6th St
Bremerton, WA 98337-1858

E-MAIL: Carol.Conley@ci.bremerton.wa.us

PHONE: (360) 473 - 5347

BILL: 6157 (For)

SUBJECT: Senate Bill 6157

MESSAGE:

Representative Larry Seaquist:

The City of Bremerton's annual budget runs from Jan 1, 2009 through December 31, 2009. All of our employees, with the exception of our Police Guild, started 8 unpaid furlough days or reduced work week schedules as of May 1, 2009 thru December 31, 2009 due to budgetary deficits. Those furlough days taken in May and June would be excluded under the SB 6157. I am sure Bremerton is not the only entity to be on other than a biennial budget.

Has the Legislature given any thought to jurisdictions that are not on a biennial budget and how this may affect their employees' retirement?

Respectfully,

Carol S. Conley

Human Resources Manager

City of Bremerton

345 Sixth Street, Suite 600

Bremerton, WA 98337

Telephone (360) 473-5347

NOTE: We are 99% sure that this constituent is in your district

RESPONSE REQUESTED: Ms. Conley has requested a response to this message.

Burkhart, Kelly

Subject: DRS Email 10-018, Furlough/Temporary Layoff

From: Eby, Wilma (DRS)

To: Frost, Marcie (DRS)

Sent: Tue Sep 21 10:22:20 2010

Subject: FW: DRS Email 10-018, Furlough/Temporary Layoff

Senate Bill (SB) 6157 was passed by the 2009 legislature. It allowed any compensation forgone by a Public Employees' Retirement System (PERS) member, due to a furlough during the 2009-2011 biennium, to be included in the average final compensation calculation of that member's retirement benefit. The qualifying factors are a reduction in hours **and** salary and the furlough must have been an integral part of the employer's efforts to reduce expenditures.

SB 6503 was passed by the 2010 legislature and added members of the Teachers' Retirement System (TRS), Washington State Patrol Retirement System (WSPRS), Law Enforcement Officers' and Fire Fighters' Retirement System, (LEOFF), and Public Safety Employees' Retirement System (PSERS) who work for State Agencies or Institutions of Higher Education.

What is a furlough?

A furlough is a reduction in work hours and a corresponding reduction in salary. The term would also apply if an individual took a voluntary leave without pay as part of an employer's expenditure reduction efforts.

Who may be affected?

All members of PERS.

Members of TRS, WSPRS, LEOFF, and PSERS who work for State Agencies or Institutions of Higher Education.

The member must have all or part of the 2009-2011 biennium in their average final compensation (AFC) time period.

Key Points

- | Employers should report normally – hours worked and compensation paid
- | Retirement contributions should only be taken on compensation paid
- | Members will only be impacted if their AFC period includes the 2009-2011 biennium
- | A member does not have to retire during the 2009-2011 biennium to benefit from SB 6157 or SB 6503
- | Early and mid-career employees are less likely to have furlough in the 2009-2011 biennium impact their AFC period

How does a furlough impact reporting by employers?

Employers should report actual hours worked and compensation paid. If DRS determines that the 09-11 biennium could impact a member's AFC period, the employer will be asked to verify the use of furloughs as part of an expenditure reduction effort. Also, the employer will be asked for the amount of compensation foregone by an employee due to the furlough, the hours that would have been worked and the period in which the work would have taken place. DRS is not prescribing the documentation employers should keep on the furloughs. This may be done by employer resolution, documentation in an employee's personnel file, or any other method that will allow an employer to respond to future requests.

How does a furlough affect a member's retirement benefit?

SB 6157 and SB 6503 provides only for lost compensation due to a furlough, it does not grant service credit.

| **Earnings:** In furlough cases, there will be a reduction in earnings reported by the employer. This reduction could be a small amount per month or full months of leave without pay. In applying SB 6157 and SB 6503, DRS will confirm the furlough impact on earnings with the employer.

| **Service Credit:** Depending on the retirement plan and the length of the furlough, service credit may be affected as the member will be granted service credit (full or partial) based on the hours of service reported each month. In situations where members of Plans 2 and 3 lose service credit due to a furlough, they have the option of purchasing the time as an authorized leave of absence. Plan 1 has no such provision.

| **Retirement Benefit Calculation:** The AFC period is determined by consecutive service credit months of a member's highest earnings. The member must still have sufficient service credit in the months the furlough took place in order for DRS to include it in the AFC.

Examples:

Ben's employer determines that its expenditure reduction efforts during the 2009-2011 biennium will include reducing Ben's work hours. Ben is a fulltime employee earning \$3,000 and will be subject to two furlough days per month for six months. If this period falls within Ben's average final compensation period will it qualify under the law?

Yes.

City of Summerville decides to give all of their employees a 2.5% cost of living increase instead of 5.0% they had hoped to give as a part of their expenditure reduction effort. Would this reduction qualify under the law?

No, this is not a reduction of salary and hours.

What other budget reduction situations generally will not qualify as a furlough under these provisions?

- | Across the board pay cuts
- | Other pay cuts that are not a result of a reduction in work hours
- | Not providing expected pay increases, even if previously promised to employees, such as foregone cost of living or merit pay increases
- | The salary foregone by a member who is terminated or voluntarily resigns, even if it is part of the employer's budget reduction strategy

Questions

Should you have questions, please reply to this notice or call Employer Support Services at 360-664-7200 (option 2) or 1-800-547-6657 (option 6 then option 2).