

RESPONSE TIME

QUARTERLY NEWS FOR FIRST RESPONDERS



- New Legislation
- New Studies Show Simple Way to Improve Local Pension Funds and Warn of Consolidation Pitfalls
- Aggravation of Preexisting PTSD Sufficient for Line of Duty Disability Pension
- Ordinance Does Not Create Constitutional Right to Healthcare
- IPPFA Members Have a New Support System
- Oak Park's Narrowing of PSEBA Coverage Results in Lawsuit
- And More...

January 2019 Vol. 2 Iss. 1

Holiday Gifts from the General Assembly

Happy New Year from your friends at Karlson Garza LLC! The good people in Springfield have bestowed us with gifts in the form of new legislation. With each new year comes the effective date of new laws. Below, please find a very brief summary of some laws potentially impacting your pension funds. From new training requirements, to limitations on return to active service, to expanded felony divestiture provisions, the Illinois General Assembly had a busy 2018. Many of the 2018 legislation became effective on New Year's Day 2019. What the General Assembly will do in 2019 is already the subject of great speculation and concern. Before engaging in prognostication, let's examine where the 2018 legislature left us.

Pension Code Amended to Expand Felony Divestiture to Survivors

Illinois Pension Code Section 5 (Sec 2-156), (Sec 3-147), (Sec 4-138), (Sec 5-227), (Sec 6-221), (Sec 7-219), (Sec 8-251), (Sec 9-235), (Sec 10-109), (Sec 11-230), (Sec 12-191), (Sec 13-807), (Sec 14-149), (Sec 15-187), (Sec 16-199), (Sec 17-149.1), and (Sec. 18-163): No survivor benefits will be paid out to anyone that has a felony conviction that relates to, in any way, the service of the member from whom the benefit results. This legislation might as well be known as the "Joe Gliniewicz Law" or "GI Joe Law." As many may remember, Joe Gliniewicz was a Fox Lake police lieutenant committed suicide in what appears to be an elaborate scheme to thwart a law enforcement investigation into Gliniewicz and his wife's misappropriation of funds. Gliniewicz's widow may receive his police pension.

Chiefs IMRF Participation Window Closes

Illinois Pension Code: (3-109.1): On or After January 1, 2019, a person may not elect to participate in the Illinois Municipal Retirement Fund with respect to his or her employment as the Chief of police of a participating municipality, unless the Chief had time in the Illinois Municipal Retirement Fund before January 1, 2019.

Re-Entry to Active Service Law Updated

Illinois Pension Code: (3-124.1(b))(NEW) If a police officer re-enters active service on or after January 1, 2019, and is receiving pension benefits, that police officer can continue to receive pension benefits but they can only participate in a defined contribution plan and may not establish creditable service towards their pension fund.

Changes Regarding Administrative Decisions

Section 5 of the Illinois Administrative Procedure Act 10-50 regarding Decisions and Orders now requires final orders to include the contact information for the person entering the order and the contact information for all parties of the record for serving pleadings, notices, and reviews. Final orders must also include any regulations the agency has regarding motions or requests for reconsideration with citations.

Changes Regarding Administrative Review

Section 10 of the Code of Civil Procedure Section 3-107 and 3-111: Administrative reviews will not be dismissed based on “misnomer of an agency, board, commission, or party that is properly served with summons that was issued in the action within the applicable limits” and “where a timely action for administrative review has been filed that identifies that final administrative decision under review and that makes a good faith effort to properly name the administrative agency.”

Mandatory Training Regarding Sexual Assault

Illinois Police Training Act Section 5 (15 a-5): On or before January 1, 2021, law enforcement agencies must revise and implement policies regarding incidents of sexual assault or abuse to be consistent with these guidelines (b-5): On or before January 1, 2020, the Attorney General, Illinois Law Enforcement Training Standards Board, and Department of State Police will revise guidelines to include responding to victims who are under thirteen years old at the time that sexual assault or abuse occurred.

Mandatory Mental Health Training

“Sam’s Act” Illinois Police Training Act: Addition of mental health awareness training to coincide with the already regulatory crisis intervention training. (b) The Board must now create a course around mental health issues, including the history, signs, symptoms, treatments, medications, and potential interactions those with mental health and their families may have regularly. Training must include de-escalating potential crises.

Commission on Police Professionalism Created

Section 5 The Uniform Peace Officers' Disciplinary Act Section 7.5 (NEW): The Commission on Police Professionalism. The Commission consists of Senate and House of Representatives members and active duty police officers, Director of the State Police, Chicago Police Superintendent, Director of ILETSB, and Directors of organizations representing sheriffs, chiefs, sworn law enforcement officers, sworn Chicago police, and sworn Illinois State Police. The Commission will receive support from ILETSB. The Commission will review training and certification processes; duties; standards for badges, shields, and identification issuances; officer involved shooting investigation policies; use of force and misconduct policies; and licensure.

Employers Must Reimburse Expenses

The Illinois Wage Payment and Collection Act Section 9.5 (NEW): Employers must reimburse employees for necessary expenses and losses incurred by an employee within the scope of employment that must be submitted within 30 calendar days unless an expense policy allows for additional time. This does not apply if an employer already has an employee reimbursement policy or if they failed to follow the policies of an existing reimbursement policy.

New Studies Show Simple Way to Improve Local Pension Funds and Warn of Consolidation Pitfalls

Two new studies focusing on police and fire pension systems in Illinois have shown that much is to be gained by easing a key pension system restriction. The studies, performed for the Illinois Public Pension Fund Association (IPPPFA), also show that the consolidation of local funds into one large state entity is risky and offers no real benefit to taxpayers

“These studies tell us that when you ease a single arbitrary restriction on local pension systems, you get the best bang for the buck for taxpayers and retired police and firefighters,” said IPPFA President James McNamee. “They also demonstrate that bigger isn't always better, and that consolidating local pension funds is risky, may not generate the expected cost savings, and may harm local economies.”

The studies, performed by Anderson Economic Group, LLC of Chicago, examined what would

happen if the Illinois General Assembly voted to ease the investment restrictions on local pension funds with less than \$10 million in assets. The studies showed that gains for these

approximately 228 smallest funds in Illinois would average as much as 1.8 percentage points per year if the restrictions were eased, and this action would increase average annual pension fund returns statewide by at least \$418 million over 20 years.

“Higher returns means it won't cost taxpayers extra to keep these pension funds healthy,” McNamee said. “Expanded investment authority is the least cumbersome and most effective way to ease the local contribution responsibility.”

The easing of investment restrictions will result in near-certain higher returns even when taking into account the higher volatility of riskier assets, the studies said.

The studies also concluded that any move to consolidate all 641 downstate Illinois police and firefighter pension funds into one massive state pension system would be expensive and

fraught with risk. Such a consolidation would require that almost all assets from each local fund be liquidated and then re-invested in the larger fund. This move could generate a one-time cost of up to \$155 million in commissions, taxes, fees and potential market losses, which would increase the pension funds' unfunded liability by that amount as well. It would take many years to recoup that cost in the minor administrative savings realized by consolidation.

Consolidation poses a particularly high risk if the transfer occurs during a period of stock market growth and the local pension funds miss out on the resulting gains from their existing investments, the studies found. In addition, economies may suffer when the local banks and asset managers who handle individual pension funds are set aside in favor of larger, out-of-state investment firms that would likely handle the consolidated pension fund.

“There's also the issue of local control,” McNamee said. “A consolidated fund means community residents have much less input on how their tax dollars are spent.”

Retirement benefits are provided to police officers and firefighters through local pension funds in Illinois. The funds are regulated by state law, but they are managed by local boards of trustees. There are 643 pension funds for police officers and firefighters in Illinois, 641 of them downstate and two in Chicago.

The IPPFA was founded in 1985 as a not-for-profit organization whose mandate was to educate public pension fund trustees. In 2009 the IPPFA became the primary education provider for public pension fund trustees in the

state of Illinois, and its members manage more than \$18 billion in pension assets.

FIRST RESPONDER MENTAL HEALTH AWARENESS DAY

The General Assembly declared the third Friday in May First Responder Mental Health Awareness Day.

Aggravation of Preexisting PTSD Sufficient for Line of Duty Disability Pension

Gregory Prawdzik v. Homer Twp. Fire Prot. Dist. FFPB (unpublished)

Gregory Prawdzik was a firefighter in Homer Township. He served in the Air National Guard. While deployed in Afghanistan in 2008-2009, Prawdzik served as a combat medic. He was exposed to trauma, resulting in PTSD and anxiety.

In July of 2011, Prawdzik notified the Fire District he had been suffering from PTSD and related the work vehicles as being a trigger. Fire apparatus are similar to the vehicles he drove in Afghanistan. A month later, Prawdzik met with his supervisors and was put on administrative leave. He was also ordered to undergo a fitness for duty test and driving program.

His fitness for duty test was completed in August of 2011 where he was diagnosed with PTSD. The examiner found Prawdzik “conditionally fit for duty” as he had been working for the past two years. In August 2013, Prawdzik again sought treatment for PTSD due to escalating symptoms. A social worker’s

evaluation determined he was impacted by “occupational stress” and “parenting stress.” In later therapy, Prawdzik’s PTSD was considered “exacerbated by physical stressors.”

On November 7, 2014, Prawdzik was driving a work vehicle when the vehicle began experiences issues shifting. When checking the shift lever, Prawdzik accidentally hit the power switch, turning all of the vehicle’s electrical components off (including lights) while traveling approximately 45 mph. This triggered an anxiety attack for Prawdzik. The blackout reminded him of being hit by an IED explosion in Afghanistan. Immediately, Prawdzik noted his PTSD became worse. He did admit the anxiety may have been increasing prior to that and he did not report having a panic attack. On November 16, 2014, two duty shifts after the anxiety inducing incident, Prawdzik reported issues with PTSD. He was placed on modified duty.

Prawdzik completed another fitness for duty test. The evaluator determined Prawdzik was unfit to anxiety. The doctor also concluded Prawdzik was unfit due to “generalized anxiety disorder with residual PTSD symptoms and a major depressive episode” but this could be the result of some “medical basis.” After more testing and treatment proved ineffective, Prawdzik filed for disability benefits with the Board.

Dr. Robert Reff, a Board chosen doctor, believed that Prawdzik had “Generalized Anxiety Disorder and residual post-traumatic symptoms” that was permanent and the PTSD was “at least in part, the result of [Prawdzik’s] firefighter duties.” Dr. Stevan Weine, another Board doctor, said that Prawdzik had “chronic PTSD, recurrent Major Depression, and isolated traumatic stress symptoms” that were the

result of “exposure to stress as a firefighter/EMS” and the problems “were initially caused by his combat exposure in Afghanistan but were exacerbated by the stress of firefighter work.” Dr. Cathy Frank, the third doctor chosen by the Board, determined that Prawdzik’s PTSD was aggravated by “exposure to trauma on the job.” Dr. Frank determined that the PTSD and major depressive disorder came from his time in Afghanistan, not from anything work related.

Based on this evidence the Board determined Prawdzik was eligible for a “non-duty” disability benefit. Prawdzik was not eligible for a line-of-duty benefit because the Board did not recognize the, November 7, 2014, “blackout” incident as the cause for the PTSD.

In the initial administrative review suit taken up against the board, the circuit court affirmed the Board’s decision. The Appellate court considered the opinions of the three doctors chosen by the Board and how each of them, in their own words, determined that Prawdzik’s work as a firefighter aggravated his PTSD. According to the Illinois Pension Code, an event at work does not have to be the sole (or even proximate) cause of a disability. Instead, it is sufficient to show an act of duty is an aggravation of pre-existing condition. The Appellate Court found after the blackout incident, Prawdzik could not return to full duty as a firefighter and he was permanently disabled from that point forward. The Appellate Court overturned the Circuit Court’s and Board’s decisions. The case was remanded back to the Board to award Prawdzik a line-of-duty disability benefit.

Ordinance Does Not Create Constitutional Right to Healthcare

Larry Dawson v. City of Geneseo

Larry Dawson filed a class action lawsuit against the City of Geneseo. The City had at one point created an ordinance that allowed previous employees and retirees to remain on their City's insurance program if they had worked ten or more years. The Ordinance outline specific contribution percentages based on time worked.

In 2011, the City amended its ordinance to decrease the amount of contribution percentage and capped the amount that it would contribute to the retirees' premium. The law went into effect in January 2012 and Dawson filed an instant class action lawsuit in December of 2016.

The complaint alleged several things. First, the health insurance contribution was part of a retirement or pension benefit and therefore should have been protected by the Illinois Constitution pension protection clause. The complaint also alleged the City breached its contract when it reduced the contribution because the original ordinance was a contract. The complaint also claimed the ordinance is a promise retirees relied upon. The City filed a motion to have the lawsuit dismissed based on the first count not stating a cause of action for violation and that the ordinance included a disclaimer that prevented a contract between the two parties. The City provided a full copy of the ordinance which included at the beginning a declaration portion stating, "Terms, conditions and policies set forth in this ordinance are not intended to create a

contract, nor are they to be construed to constitute contractual obligations of any kind or a contract of employment between the City and any of its employees for a specified period of time."

The trial court dismissed the case on behalf of the City and the Plaintiffs did go on to appeal. On appeal, the court found the benefits were not protected by Article 13§5 (Pension Protection Clause) because the benefits were not related to a retirement pension system. The Appellate Court affirmed the Circuit Court's dismissal of the action.

Breach of Fiduciary Duty Suit Given Green Light by Kentucky Judge

A lawsuit filed by eight current or former Kentucky public employees representing the Kentucky Retirement Systems against KKR/Prisma Capital Partners, Blackstone Group, and Pacific Alternative Asset Management, international hedge fund sellers, will proceed. The defendants filed motions to dismiss, but Judge Philip Shepherd denied the motions and ordered the parties to proceed with discovery.

IPPFA Members Have a New Support System

IPPFA has partnered with Lauterbach & Amen, LLP and LifeStatus360 to create a program for IPPFA Fund Members. This program audits death records and notifies pension funds when a member has passed on in order to take the next necessary steps with their pension. This is an important tool for pension funds to avoid paying benefits following the death of a member. Nationwide, several pension funds have

continued to pay benefits to bank accounts of deceased members. This additional tool should supplement your fund's practice of requiring annual affidavits of continuing eligibility.

Effective, November 1, 2018, the Department of Insurance will not issue advisory opinions.

In a Siren issued on November 1st, the DOI declared it will no longer issue individual advisory opinions. Whether this means DOI will not issue opinions on wider reaching issues remains unclear. DOI has indicated it will endeavor to respond to requests for opinion made prior to November 1, 2018.

Oak Park's Narrowing of PSEBA Coverage Results in Lawsuit

In November of 2018, International Association of Firefighters AFL-CIO Local 95 filed a lawsuit against the Village of Oak Park for trying to change how they determine who should receive benefits under PSEBA.

The Village Board had recently approved a new ordinance that created new administrative procedures for determining PSEBA claims. The union argued that this ordinance violates current PSEBA law that defines "catastrophic injury" as anything that would result in a "line of duty" disability benefit. The ordinance itself redefines

"catastrophic injury" as an injury "which permanently prevent an individual from performing any gainful work" and also requires that Firefighters file claims within 30 days. The ordinance also mandates new additional steps and hoops for firefighters to jump through in order to have a complete application, some nine new categories that include descriptions of events, authorizations, and witness lists to name a few.

The Union says this ordinance violates current Illinois law, particularly the Pension Protection Clause that bars municipalities from enacting rules and regulations that would "diminish or impair" benefit.

DOI Discloses 2019 Tier 2 Salary Cap and COLA Increase

For 2019, DOI disclosed the annual COLA increase will be 1.15% and the Tier 2 salary cap has been increased to \$114,951.83

April-June (2nd Quarter) Agenda Items

- Illinois Department of Insurance Compliance Fee
- Statements of Economic Interest
- Affidavits of Continued Eligibility
- Certify Board Election Results--Active Member Position(s)/Retired Member Position/Active and Retired Member Positions
- Note Appointed Member Terms Expirations
- IDOI Annual Statement

KG LLC News

- February 2, 2019 Partner Keith A. Karlson will speak at the Illinois Local Governmental Lawyers Association Conference.
- February 27, 2019, Partner Keith A. Karlson will speak at IPPFA Regional Trustee Training in Hoffman Estates, IL
- March 8, 2019, Partner Keith A. Karlson will be teaching a Union Rights and Bargaining Strategy seminar for the Professional Fire Fighters Union of Indiana in Chesterton, Indiana.
- March 27, 2019, KGLLC Partner Keith A. Karlson will speak at the IPPFA Regional Trustee Training in Rock Island, Illinois.
- From April 10-13, 2019, KGLLC Partner Keith A. Karlson will be participating in the Securities Litigation and Shareholders' Rights Conference in New Orleans, Louisiana.

12413 S. Harlem Ave
Suite 1SE
Palos Heights, IL 60463
(708) 761-9030
Fax (708) 716-4890



This newsletter is attorney advertising material and does not constitute legal advice.