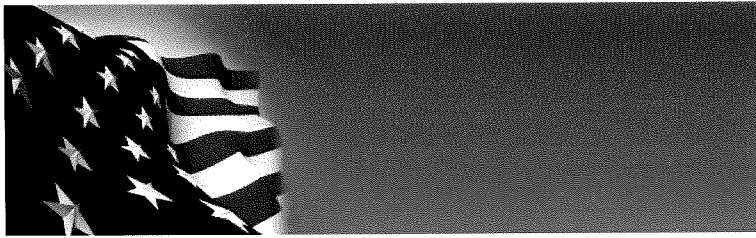


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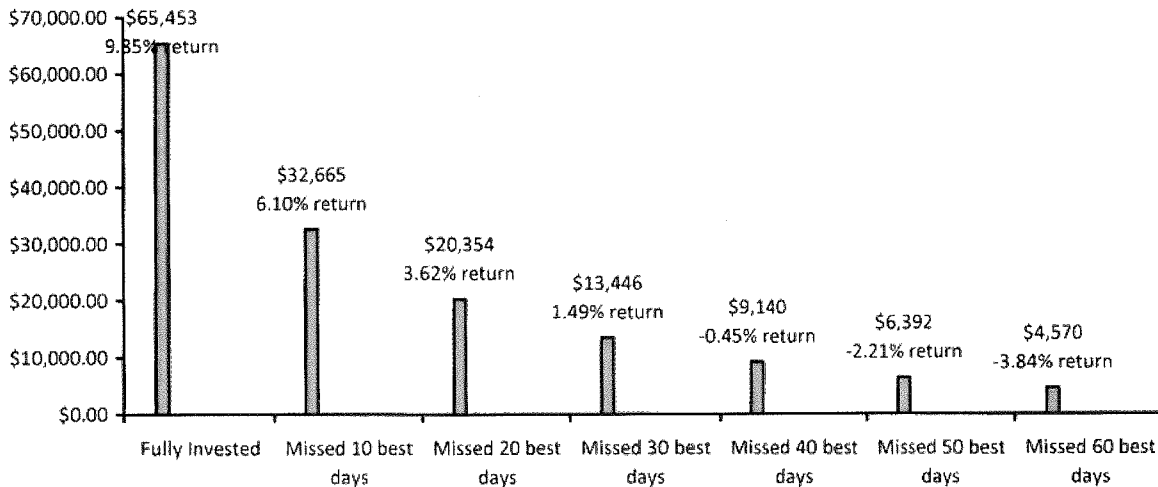


CYPEN & CYPEN NEWSLETTER for APRIL 9, 2015

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 Stephen H. Cypen, Esq., Editor
 Never Forget September 11, 2001
 and
 Always Remember May 2, 2011

1. SKIP THIS ITEM AT YOUR OWN PERIL!: Plan to stay invested. Trying to time the market is extremely difficult to do consistently. Market lows often result in emotional decision making. Investing for the long term while managing volatility can result in a better retirement income. *JP Morgan's Guide to Retirement* presents the following chart showing impact of being out of market:

Returns of S&P 500 - Performance of a \$10,000 investment between January 3, 1995 and December 31, 2014:



Two other interesting factoids: (1) six of the ten best days occurred within two weeks of the ten worst days and (2) if you missed sixty of the best days in the last twenty years, the return on your \$10,000 investment would be -3.84% versus 9.85%. (Another words, if you missed just sixty days out of the 7,300 days in the period, your \$10,000 would be \$4,570 instead of \$65,453.)

2. NASRA LETTER TO MOODY'S: National Association of State Retirement Administrators has written to Moody's Investor Service to express its concern, once again, about Moody's presentation of adjusted public pension accounting information, and drawing funding conclusions from the modified data. In a recent report, Moody's used unconventional metrics to conclude that most state and local governments' pension contributions were insufficient to stem unfunded liability growth, even for those that are making their full actuarially determined contribution. Following a previous Moody's publication, NASRA noted its concern that Moody's used proprietary calculations of pension data to measure public pension funding levels, then failed properly to clarify both this fact and the effect on public pensions of declining interest rates and inflation. The result is a picture of public pensions that is misleading to many readers. In its newest report, Moody's failure to factor inflation or wage growth into the assessment leads to a finding that increasing required contributions are back-loading the funding schedule. Yet, the

contribution rate is constant and remains a level percent of payroll in real inflation-adjusted dollars, which are important outcomes that Moody's ignores. Level cost as a percent of payroll is a pension funding goal of nearly every state and local government. The method is recognized as a sound actuarial practice, and is recommended by the Government Finance Officers Association. Contributions that are a level percent of payroll are intended to achieve not only intergenerational cost equity but also affordability, sustainability and budget predictability -- policy objectives that recently were reaffirmed by associations representing the nation's governors, legislatures and others as core elements of pension funding guidelines for elected officials. Moody's approach to measuring pensions is accounting-based, and bears no resemblance to existing funding practices or typical actuarial approaches. By ignoring inflation, what the report characterizes as "level" is, in fact, "level" in nominal dollars only and arguably is a front-loaded funding policy that undercharges future taxpayers at the expense of today's taxpayers. This method would require current pension contributions to be a larger percent of payroll and future pension contributions to be a smaller percent of payroll. Modeling used by Moody's fails to account for the critical fact that payroll grows over time due to inflation. Thus, if a government's funding policy aims to keep pension costs a level percent of payroll over time, by design, the costs themselves also grow commensurately. Moody's approach to valuing pension conditions may serve its own purposes for stress-testing, financial condition and creditworthiness of state and local governments. However, publishing the outcome of its approach outside of this context without proper qualification produces misunderstanding and misuse among many readers and pension plan stakeholders. Such confusion could be avoided and understanding improved if Moody's would explain the differences in its methodology when compared to established governmental accounting and actuarial funding methods, since the outcomes are so different and easily misconstrued. Future Moody's reports should more clearly qualify the presentation of public pension information, including the separation of pension accounting from pension funding. In the absence of such clarifications, Moody's information about public pension plans will continue to mislead and cause confusion. Way to go, Keith.

3. HALF OF AMERICANS NOT SAVING FOR RETIREMENT: Over 45% of non-retired Americans are not saving for retirement, according to plansponsor.com. What American investors say they will do and what they actually wind up doing to save for retirement show a big gap. Of those not yet saving, only 36% plan to do so in the future, and nearly 10% say they never plan on saving for retirement. The study also found significant discrepancies by age among those who have not yet started saving. Although they plan to save in the future, 58% of the study's youngest non-retired respondents (ages 18 to 34) have not yet started. One disconnect: between the expectations Americans have for retirement savings strategies and the reality of what they do is striking. Almost all respondents ages 18 to 35 (90%) say they have started or plan to start saving for retirement before they turn or turned 30. Just 7% of that group plan to start saving for retirement in their 40s. The next age group, 35-to-44-year-olds revealed a significant increase in those who did start or planned to start saving for retirement in their 40s, with more than one-quarter saying so. Nearly all (90%) of the study's youngest respondents indicated they either plan to start or did begin saving in their 30s or earlier. However, only 64% of respondents ages 35 to 44 actually began saving in their 30s or earlier. Boy, are we in trouble.

4. A COMPENDIUM OF FINDINGS ABOUT AMERICAN EMPLOYERS: Transamerica Center for Retirement Studies has released its 15th Annual Transamerica Retirement Survey. At 127 pages, the document is a treasure trove of information. Here are just a few categories of the executive summary:

- Employers' Economic Situation and Expectations
- The Current State of Retirement Benefits
- Matching Contributions
- Automatic Features
- Roth 401(k)
- Professionally Managed Services / Asset Allocation Suites
- Retirement Plan's Educational Offerings
- Transition Assistance for Pre-Retirees
- Management and Perceptions Related to Retirement and Retirement Benefits
- Employers' Perceptions of Employee Involvement with Retirement Planning

Access the entire document at: http://www.transamericacenter.org/docs/default-source/resources/center-research/tcrs2015_sr_15th_compendium_employer.pdf

5. COMMUNITY WELL-BEING RANKINGS: Gallup and Healthways have released their well-being rankings. The well-being index surveyed residents to get a sense of their social, physical and financial health, as well as their sense of purpose and connections to their community -- all factors that contribute greatly to worker productivity, societal health costs and the economic competitiveness of a place. Here are the top five spots, plus others that may be of some interest to readers:

- 1 North Port-Sarasota-Bradenton
- 2 Urban Honolulu
- 3 Raleigh
- 4 Oxnard-Thousand Oaks-Ventura
- 5 El Paso
- 19 Cape Coral-Fort Myers
- 35 Miami-Fort Lauderdale-West Palm Beach
- 41 Orlando-Kissimmee-Sanford

47	Palm Bay-Melbourne-Titusville
53	Jacksonville
80	Lakeland-Winter Haven
81	Tampa-St. Petersburg-Clearwater

6. WHAT IS THE AVERAGE RETIREMENT AGE?: The average retirement age for men is about 64 and it is right around 62 for women, according to a American Century Investments blog. Another recent report defined the average retirement age as the point when the labor force participation rate drops below 50%. A big decline for men started after World War II, when Social Security benefits and employer pensions made retirement more attractive. Other big developments included introduction of Medicare in 1965 and an increase in Social Security benefits in 1972. More women have entered the workforce since the 1980s, and many couples like to coordinate their retirement. People with more education tend to work longer, and older workers tend to be among the more educated, healthiest, and wealthiest. Working longer can be the key to a secure retirement – monthly Social Security benefits claimed at age 70 are more than 70% greater than those claimed at age 62. Most retirees are unaware of this information, suggesting that additional retirement education may be needed. Here is the summary:

- The average retirement age has increased only slightly in the last 10 years to 64 for men and 62 for women.
- The average age for men has been declining since the advent of Social Security benefits, pensions, and Medicare.
- Women have become more present in the workforce since the 1980s.
- People with more education tend to work longer.
- Older workers tend to be among the more educated, healthiest, and wealthiest.

7. IN §1983 ACTION, ASSISTANT FIRE CHIEF WHOSE POSITION WAS ELIMINATED, ALLEGEDLY FOR BUDGETARY PURPOSES, FAILED TO SHOW HIS SPEECH WAS PROTECTED BY THE FIRST AMENDMENT: Moss, former assistant fire chief of City of Pembroke Pines, appealed the federal district court's order granting City of Pembroke Pines' judgment as a matter of law on Moss's First Amendment retaliation claim. Moss asserted the claim after being terminated. Moss was terminated after the city eliminated the assistant fire chief position for what the city said were budgetary purposes. Moss contended, however, that he was terminated in retaliation for his speaking out about the city's handling of budget and pension issues. After trial, the district court held that Moss had failed to show that his speech was protected by the First Amendment or that his interest in the speech outweighed the city's interest in avoiding dissension within the fire department. The district court granted judgment in favor of the city as a matter of law. The First Amendment claim is governed by a 4-stage analysis. First, the court considers whether Moss's speech was made as a citizen and whether it implicated "a matter of public concern." If the first threshold requirement is satisfied, the court then weighs Moss's First Amendment interests against the city's interest in regulating his speech to promote efficiency of the public services it performs through its employees. The foregoing two issues are questions of law that have to be decided by the court. If the speech is so protected, the third stage of the analysis required Moss to show that it was a substantial motivating factor in his termination. If Moss is able to make this showing, the burden shifts to the city to prove that it would have terminated Moss even in the absence of his speech. Because these final two issues, which address the causal link between Moss's speech and his termination, are questions of fact, a jury resolves them unless the evidence is undisputed. The present appeal concerned only the first two steps of the analysis: (1) whether the speech at issue met the citizen-public concern requirement and (2) whether the city's interest in restricting that speech outweighed the employee's wish to be heard. Because the district court determined, as a matter of law, that Moss had failed to show that his speech was made in his capacity as a citizen or that his First Amendment rights outweighed the city's interest, it was unnecessary for the court to submit to the jury the causation question encompassed by the last two prongs of the analysis. In summary, the district court correctly ruled that the speech by Moss at issue on this appeal was not protected by the First Amendment. Alternatively, even if the speech were so protected, the city's interest in restricting that speech outweighed Moss's desire to express his opinion. For these reasons, the district court correctly granted the city judgment as a matter of law on Moss's claim that he was terminated from his position in retaliation for the exercise of his First Amendment rights. *Moss v. City of Pembroke Pines*, 25 Fla. L. Weekly Fed. C1051 (U.S. 11th Cir. March 31, 2015).

8. DEAL REACHED IN RHODE ISLAND PENSION OVERHAUL CASE: A deal in the legal battle over Rhode Island's 2011 landmark public pension system overhaul was unveiled in court, affecting about 59,000 past and present state employees. The Associated Press reports that most of the retirees and public unions suing the state had accepted the terms ([See C & C Newsletter for March 26, 2015, Item 4](#)). The settlement provides certainty for public employees and for municipalities, locks in 90% of the savings from pension reform and resolves six of nine lawsuits against the state. The deal, however, does not end years of legal wrangling over the higher retirement ages and cuts to cost-of-living increases that were designed to save the state \$4 billion over 20 years. The parties must be notified and the settlement has to be formally approved by the judge. And because pension reform was done legislatively, the settlement terms have to be incorporated into law and approved by the General Assembly. Unions representing municipal police, Cranston police and Cranston fire, which collectively represent about 800 people, did not agree to the terms. Their lawsuits are continuing, and will be addressed by the court after the settlement is implemented.

9. 36TH ANNUAL POLICE OFFICERS' AND FIREFIGHTERS' PENSION TRUSTEES' SCHOOL: The 36th Annual Police Officers' & Firefighters' Pension Trustees' School will take place on June 2-4, 2015. You may access information and updates about the Conference, including area maps, a copy of the program when completed and links to register at the Residence Inn Tallahassee Universities at the Capitol. Please continue to check the FRS website for updates regarding the program at

www.myflorida.com/frs/mpf. All police officer and firefighter plan participants, board of trustee members, plan sponsors and anyone interested in the administration and operation of the Chapters 175 and 185 pension plans should take advantage of this unique, insightful and informative program.

10. APHORISMS: If you do not have a sense of humor you probably do not have any sense at all.

11. TODAY IN HISTORY: In 1953, T.V. Guide publishes 1st issue.

12. KEEP THOSE CARDS AND LETTERS COMING: Several readers regularly supply us with suggestions or tips for newsletter items. Please feel free to send us or point us to matters you think would be of interest to our readers. Subject to editorial discretion, we may print them. Rest assured that we will not publish any names as referring sources.

13. PLEASE SHARE OUR NEWSLETTER: Our newsletter readership is not limited to the number of people who choose to enter a free subscription. Many pension board administrators provide hard copies in their meeting agenda. Other administrators forward the newsletter electronically to trustees. In any event, please tell those you feel may be interested that they can subscribe to their own free copy of the newsletter at <http://www.cypen.com/subscribe.htm>.

14. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.

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