



**CYPEN & CYPEN**  
**NEWSLETTER**  
**for**  
**OCTOBER 13, 2016**

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Never Forget September 11, 2001  
and  
Always Remember May 2, 2011

**1. EMPLOYEE CONTRIBUTIONS TO PUBLIC PENSION PLANS:** The National Association of State Retirement Administrators has issued a new brief "*Employee Contributions to Public Pension Plans.*" For the vast majority of employees of state and local government, both participation in a public pension plan and contributing toward the cost of the pension are mandatory terms of employment. Requiring employees to contribute distributes some of the risk of the plan between employers and employees. The primary types of risk in a pension plan pertain to investment, longevity, and inflation. Employees who are required to contribute toward the cost of their pension assume a portion of one or more of these risks, depending on the design of the plan. The prevailing model for employees to contribute to their pension plan is for state and local governments to collect contributions as a deduction from employee pay. This amount usually is established as a percentage of an employee's salary and is collected each pay period. Employee contribution rates typically are between four and eight percent of pay, but are outside these levels for some plans. In some cases, required employee contributions are subject to change depending on the condition of the plan and other factors. In some plans, the employee contribution is actually paid by the employer in lieu of a negotiated salary increase or other fiscal offset. Some 25 to 30% of employees of state and local government do not participate in Social Security. In most cases, the pension benefit -- and required contribution -- for those outside of Social Security is greater both than the typical benefit and the required contribution for those who do participate in Social Security. Many states in recent years made changes requiring employees to contribute more

toward their retirement benefits: since 2009, more than 35 states increased required employee contribution rates. As a result of these changes, the median contribution rate paid by employees has increased. Median contribution rates have risen to 6% of pay for employees who also participate in Social Security, and to 8.1% for those who do not participate in Social Security. Contribution requirements for certain employee groups in some states, such as Missouri and Florida, which previously did not require some employees to make pension contributions, were established in recent years for newly hired employees, existing workers, or both. Pennsylvania recently joined other states, such as Arizona, Iowa, Kansas, and Nevada, in maintaining an employee contribution rate that varies depending on the pension plan's actuarial condition. Because of the effect investment returns have on a pension plan's actuarial condition, employee contributions generally will rise following periods of sub-par investment returns and fall when investment returns exceed expectations. Changes approved in recent years in Arizona and California requires many workers to pay one-half of the normal cost of the benefit, which can result in a variable contribution rate. And the Utah plan affecting new hires requires employees to contribute the full cost of the benefit above 10% of pay, which could become variable. Most employee contribution rate increases affected all workers-current and future. In some states, such as Virginia and Wisconsin, new and existing employees are now required to pay the contributions that previously were made by employers in lieu of a salary increase. A growing number of public employees now participate in hybrid retirement plans, which combine elements of defined benefit and

defined contribution plans, and that transfer some risk from the employer to the employee. In one type of hybrid plan, known as a combination defined benefit-defined contribution plan, employees in most cases are responsible for contributing all or most of the cost of the defined contribution portion of the plan. Contribution requirements to the DB component of combination plans vary: some are funded solely by employer contributions, while others require contributions from both employees and employers. Employee contributions in some cases are set by collective bargaining, and can be changed when labor agreements are negotiated. For example, required employee contribution rates for employee groups in California and Connecticut increased in recent years as a result of labor agreements in those states. The legality of increasing contributions for current plan participants varies. Some states prohibit an increase in contributions for existing plan participants. For example, a 2012 ruling in Arizona found that legislative efforts to increase contributions for existing workers violated a state constitutional protection against impairment of benefits. In other states, however, such as in Minnesota and Mississippi, higher employee contributions either did not produce a legal challenge, or withstood legal challenges (such as in New Hampshire and New Mexico). Employee contributions are a key component of public pension funding policies. The vast majority of employees of state and local government are required to contribute to the cost of their pension benefit, and this number has grown in recent years as most states that previously administered non-contributory plans now require worker contributions. Many employees also are being required to contribute more toward the cost of their retirement benefit. In

some cases, this requirement applies to both current and new workers; in other cases, only to new hires. A growing number of states are exposing employee contributions to risk -- either by tying the rate directly to the plan's investment return, or by requiring hybrid or 401k-type plans as a larger component of the employee's retirement benefit. The Florida Retirement System's employee contribution rate is 3.0%, and retirees' do have Social Security coverage. (October, 2016).

**2. ACTUARIAL OVERBEARING:** Heads must have exploded at the leadership of the American Academy of Actuaries and the Society of Actuaries once they realized some members of their joint Pension Finance Task Force were moving ahead with a paper challenging the standard actuarial practice of valuing public pension plan liabilities according to a piece in pionline.com. The paper seeks to contribute to bringing economic reality to valuation of liabilities, shedding light on the true cost. But the initial reaction of the academy and SOA on August 1 was to refuse to let the paper see the light of day. They suppressed publication, prohibiting the task force from posting or distributing the paper. To complete its suppression, the academy and SOA disbanded their joint Pension Finance Task Force, which was created in 2002 and, because of its longevity, appeared to have become more of a permanent fixture in the organizations. Faced with mounting pressure caused by revelations of the action, the SOA on August 26 relented and now plans to release a draft of the paper September 5, followed by publication in the society's Pension Forum in October that includes different perspectives. The paper calls for measuring public plan liabilities using

risk-free interest rates instead of the standard practice of using long-term rates of return on investments. The SOA deserves credit for backtracking on the original ban to limit expression it imposed with the academy. But its earlier action might still serve to intimidate members from expressing ideas and leave actuarial members and the pension plan community, including fiduciaries, distrustful of the SOA's embrace of objective research and discussion on actuarial issues. Craig W. Reynolds, SOA president and consulting actuary at Milliman, in an open letter posted on the society's website, makes no mention of any support of the change by the academy. For its part, the academy offered no comment on the SOA plans for publication other than acknowledgement that it will be released. The academy remains critical of the paper for not completing what it calls its rigorous review process and adherence to its editorial standards. Thomas F. Wildsmith IV, president of the Washington-based academy and president and senior manager of public policy at Aetna Inc., in an open letter to members, said the academy "will shortly" be publishing its own paper "that will include concepts from financial economics." Actuaries and the pension community have to wonder whether the academy will adhere to its rigorous review standards for its own paper, developed in the wake of the prohibition on the PFTF paper, which underwent the academy's review process for months. The society and academy need to do more to undo the damage and restore trust by reaching out to members and the pension plan community, which relies on actuarial consultants to help determine valuation of liabilities and contribution requirements. One way they could do so is to reject any ongoing effort like the one by the National Conference on Public

Employee Retirement Systems. NCPERS is seeking to suppress any divergence from defined benefit plan orthodoxy, wanting to impose a form of control over service providers, including actuarial firms, and pension plan fiduciaries. NCPERS last year adopted what it calls a code of conduct that's more like a pledge of loyalty. It puts obstructions in the way of doing business with firms not approved by NCPERS. To enforce its code, NCPERS created two lists. One is a list of the good guys that adopted the loyalty pledge. Segal Consulting, whose services include actuarial work, and Gabriel Roeder Smith & Co., an actuarial consulting firm, were among the first signatories of the NCPERS code, both signing in February. The other list is composed of bad guys, as defined by NCPERS, to give pension plan fiduciaries “a way to screen service providers for practices that harm participants and beneficiaries.” For actuaries and money managers and other service providers, signing the NCPERS code of conduct raises the question of how such observance squares with their own professional codes. For pension fund trustees, can they still meet fiduciary standards of duty when they observe the code of conduct, which obligates them to limit their opportunity set of money managers? Pension plan funding is about finance and realistic valuation of liabilities. Efforts such as those by the Academy of Actuaries, the SOA and NCPERS that resist new approaches undermine the ultimate goal of pension income security, weakening public confidence in defined benefit systems.

### **3. COUNTERPOINT: IN RESPONSE TO “ACTUARIAL**

**OVERBEARING”**: Dana Bilyeu, the Portland, Oregon executive director

of the National Association of State Retirement Administrators, has responded to editorial from pionline.com entitled “Actuarial overbearing.” Ms. Bilyeu believes the editorial “Actuarial overbearing” is based on a faulty premise: those who oppose certain changes to public pension reporting standards are somehow against meaningful disclosure. That is simply not true. This is not the first time there has been pushback on a public pension reporting standard. In 1980, the Financial Accounting Standards Board issued Statement 35, Accounting and Reporting by Defined Benefit Pension Plans. The FASB took the position that this standard also applied to governmental plans. (Prior to this FASB pronouncement, generally accepted accounting principles for governmental activity had been considered to be the domain of the National Council on Governmental Accounting with FASB standards being applicable to non-governmental activity.) The FASB maintained that Statement 35 was intended for going concerns, yet disregarded the impact of future salary increases on the accrued liability for active plan participants. Implementation of the standard would have generally resulted in a significant and misleading increase in the apparent funded status of governmental plans. Members of our organization vigorously opposed this proposal due to the potential harm caused by this misleading “disclosure.” This event was also a significant contributor to the establishment of the Governmental Accounting Standards Board. One of the first GASB projects resulted in reinforcement of the notion that, for a governmental going concern, future salary increases needed to be included in the determination of the obligation for accrued pension benefits, with the projected liability being higher than would have been

the case under the FASB standard. Now there is a contingent within the actuarial community that suggests additional public-sector resources should be spent to have actuaries calculate the liabilities of the plan if it were immediately terminated and sold at a market price, a scenario that is legally impermissible in nearly all jurisdictions. Although such a disclosure might be relevant for a company that can be merged, acquired, or declared in bankruptcy, the organization is concerned that this calculation is not decision-useful to public-sector stakeholders and policymakers, and, as in 1980, this calculation has the potential for a significantly misleading inference. To suggest that the pushback is solely to make plan funding look rosier belies history and the intent of plan disclosures -- to help policymakers make informed decisions with decision-relevant facts. GASB recently completed a multiyear, transparent process of reviewing and revising its standards on public pension plan reporting. Numerous significant changes are now in effect regarding how pension obligations are calculated and disclosed by state and local governments. The new standards also require modified liability calculations, including alternative discount rates if the funds set aside to pay pensions are projected to be insufficient. GASB determined that a market price of public pension liabilities is not appropriate. Those who disagree with this outcome are now suggesting the actuarial standard-setter -- *i.e.*, the Actuarial Standards Board -- impose such a disclosure requirement. While a different venue, the same concerns remain. Actuarial calculations are critical for the systematic funding of pension obligations. The National Association of State Retirement Administrators' Standing Resolution on Funding Discipline in Public Employee

Retirement Systems encourages all state and local retirement systems to adopt a clear funding policy and to commit to meeting actuarially determined contributions. However, given that public plans are going concerns, the resolution also states, that it “is a fundamental objective of public employee retirement systems to establish and receive contributions which will remain approximately level as a percentage of payroll over time, to ensure affordability and sustainability of benefits, intergenerational cost equity and consistent budgetary operations.”

Market price calculations, which are based on current interest rates, are volatile and counter to such funding policies. In fact, even corporations have continually asked Congress for, and received, relief from using current interest rates to fund their plans. Journalistic skepticism is reasonable and expected, but it should not be limited to one side of an issue: Those pushing for this new calculation could just as easily have a financial interest in the outcome, such as the additional actuarial work, or the desire to paint public pensions in a more dismal light, as those who oppose it. Yet, reviewing the history of public pension reporting standards reveals that the public pension community has supported disclosures they believe provide for stable, systematic funding of the plan, whether the disclosures currently make them look better or worse. We give thanks to one of our avid readers for bringing these informative pieces to our attention.

#### **4. ATTITUDES ABOUT CURRENT SOCIAL SECURITY AND**

**MEDICARE BENEFIT LEVELS:** The 26<sup>th</sup> Annual Retirement Confidence Survey shows that 10% of workers are very confident and 29% are

somewhat confident that the Social Security system will continue to provide benefits of at least equal value to the benefits received by retirees today, levels statistically unchanged with those in the 2015 RCS. However, a third (32%) of workers are not at all confident that future Social Security benefits will match or exceed the value of today's benefits. Confidence that Social Security will continue to provide benefits that are at least equal to today's value is higher among workers ages 55 and older than among younger workers. Seventeen percent of retirees say they are very confident about the future value of Social Security benefits. Today's workers are almost half as likely to expect Social Security to be a major source of income in retirement (35%) as today's retirees are to report that Social Security is currently a major source of income (62%). Workers are also less likely to expect Social Security will provide them with a source of income in retirement (84%) than retirees are to indicate they have Social Security income (91%). Workers and retirees also have a low level of confidence in the continuation of current Medicare benefit levels. Eleven percent of workers are very confident that the Medicare system will continue to provide benefits of at least equal value to the benefits received by retirees today, while 33% are somewhat confident. Most workers are pessimistic, as 55% are not confident in the future value of Medicare benefits. Worker confidence about the future value of Medicare benefits is higher among those ages 55 and older, even slightly higher than confidence in Medicare benefits among current retirees. Just 15% of retirees are very confident in the value of the future benefits paid by Medicare, while 20% report they are not at all confident. 2016 RCS Fact Sheet #6.

## **5. MORE CONSERVATIVE PENSION ALLOCATION FARES BETTER:**

Pensions enjoyed modest improvement in funded status last month, but remain underwater during 2016 through three quarters, according to *October Three*. Both model pension plans it tracks improved by less than 1% in September. For the year, Plan A is down 5% and the more conservative Plan B is down less than 1%. Plan A is a traditional plan (duration 12 at 5.5%) with a 60 equity/40 fixed-income asset allocation, while Plan B is a cash balance plan (duration 9 at 5.5%) with a 20 equity/80 fixed-income allocation with a greater emphasis on corporate and long-duration bonds. *October Three* notes that stocks mostly edged up in September: the S&P 500 was flat, but the NASDAQ added 2%, the small-cap Russell 2000 earned 1%, and the overseas EAFE index was up more than 1%. For the year, the S&P 500 is up almost 8%, the NASDAQ is up 6%, the Russell 2000 is up 11% and the EAFE index is up 2% through three quarters. A diversified stock portfolio gained less than 1% during September and is now up almost 7% through the first three quarters of 2016. Interest rates moved up a bit last month, mostly at longer maturities, producing losses of less than 1%, on bond portfolios in September. For the year, bonds remain up 8% to 10%, with longer duration bonds enjoying the best results. Overall, the firm's traditional 60/40 portfolio gained a fraction of 1% during September and is up more than 7% so far this year. The conservative 20/80 portfolio was down fractionally last month but remains up almost 10% through the first three quarters of 2016. The stock market has bounced back from losses in early 2016, posting modest gains so far this year, and bonds have done

even better on the strength of lower interest rates. These gains have not kept up with increase in pension liabilities however, which are driven by the same decline in interest rates and remain near record low levels. However, *October Three's* analysis shows its 60/40 plan has a much larger gap in liabilities to assets than the more conservative portfolio.

## **6. THE FED OFFERS A GENEROUS RETIREMENT PLAN, BUT**

**FUNDS IT RESPONSIBLY:** State and local government employee pensions are in the news every day, with stories of excessive benefits, dodgy accounting and systemic underfunding. We forget that the federal government offers pension plans as well, and the Federal Reserve's retirement plan, which serves employees both in the Fed's Washington DC headquarters and its regional banks, offers some interesting comparisons according to *Forbes*. Like state and local governments, the Fed offers retirement benefits that far exceed what a typical private sector worker is likely to receive. But unlike state and local pensions, the Fed accounts for its costs honestly and funds its benefits responsibly. The Fed's retirement plan puts aside much more money, and takes much less risk with that money, than do state and local employee pensions. The federal government, like state and local governments, offer most employees a traditional defined benefit pension, unlike the 401(k)s that most private sector workers receive. The Fed works under FASB (Federal Accounting Standards Board), not GASB, accounting guidelines. Under FASB rules, the Fed discounts its pension liabilities using "yields available on high-quality corporate bonds that would generate the cash flows necessary to pay the System Plan's benefits

when due,” which is how most economists think liability valuation should be done. For 2015, the Fed used a discount rate of 4.05%. Based on this discount rate, the Fed’s retirement plan had \$13.27 billion in liabilities. Combined with the plan’s \$12.5 billion in assets, this produces a funded ratio of 94%. That figure would look good even compared to state and local pensions’ typical stated funded ratio of about 75%. But the state and local figures are calculated using a 7 to 8% discount rate. Were the Fed to use that approach, its pension liabilities would shrink to \$7.96 billion and its funded ratio rise to 157%. Alternately, if state and local pensions used the Fed’s FASB-based accounting, their funded ratios would shrink to about 45%. No matter how you slice it, for each dollar of retirement benefits they have promised, the Federal Reserve has set aside over three times as much money as the typical state and local government pension. The Fed’s retirement plan does not work under those more lenient GASB rules, using a fixed discount rate to value pension liabilities has a major advantage: it eliminates the incentive to take excessive investment risk. If you are discounting liabilities and contributing based on a 4.05% interest rate, there is no accounting benefit to taking on more investment risk. The Fed’s plan should take on risk for investment purposes -- and it does. If the Fed plan’s investments pay off then its higher assets values result in a stronger funded ratio and lower unfunded liabilities. Unlike state and local plans, the Fed credits itself with investment earnings only after its investments have actually earned the money. So how does the Fed’s retirement plan invest? As of 2015, the Fed’s retirement plan aims to put 50% of its portfolio in fixed income investments, meaning bonds; 47% in U.S. and international

stocks; and about 3% in private equity and real estate. Roughly speaking, the Fed holds about half safe investments and half risky investments. How do U.S. state and local government pensions compare? According to the Center for Retirement Research's Public Plans Database, state and local plans invested only about one-quarter of their portfolios in bonds or other safe investments and about 75% in risky investments such as stocks, private equity, real estate or other alternative investments. Simply put, state and local government pensions are taking much, much more investment risk than the Fed to fund the same types of retirement benefits. The Fed runs a much tighter pension ship than do state and local governments. It contributes more and takes less risk, resulting in a better-funded and more stable retirement plan. Make no mistake, though: the Federal Reserve does offer a very generous retirement package, one that is multiples larger than most private sector pensions. While their 2015 financial statements do not contain salary data on Fed employee, by reaching back to the 2013 statements and the Fed's 2013 annual budget review one can compare the value of the Fed's retirement package to Federal Reserve employee salaries. In 2013, the Fed's retirement plan had a "service cost" (also called the "normal cost") of \$407 million, which represents the value of retirement benefits accruing to employees in that year. According to the fed's budget review, total salaries for Fed employees in 2013 were \$1.726 billion, indicating that employees accrued traditional pension benefits equal to 23.5 percent of their annual salaries. That is very generous, especially given that Fed employees do not contribute to their traditional pension plan. On top of the traditional pension, the Fed offers

a 401(k)-style thrift plan to which it contributes an automatic 1% of worker's pay while matching contributions dollar-for-dollar up to 6% of pay for a total employer contribution of 7% of wages. And on top of this, the Fed offers a retiree health benefits plan with a service cost of about 3.7% of pay. So all in, the Fed's retirement package can be worth up to 34.2% of worker's annual salaries. If you look in the Bureau of Labor Statistics Employer Cost of Employee Compensation database, in 2013 employer contributions for retirement benefits for full-time employees in professional and related occupations came to 6.2% of annual wages. So the Fed's retirement package is about 5.5% more generous than in comparable private sector jobs. Such a generous retirement plan may or may not make sense. On the pro side, a generous defined benefit pension tends to lock employees into their jobs, since workers who quit mid-career can leave a hundreds of thousands of dollars in foregone pension benefits on the table. Fed employees are probably more marketable than the typical public sector worker, so a retirement plan designed for employee retention may make sense. The Federal Reserve's retirement plan offers an instructive contrast to state and local government pensions. Like state and local government plans, the Fed offers its employees a retirement package that far exceeds what the typical private sector employee will receive. But unlike state and local governments, the Fed accurately measures the value of its pension liabilities. And the Fed takes far less investment risk in funding its retirement benefits than do state and local governments. There are lessons to be learned, for those willing to listen.

**7. IRS v. FACEBOOK:** Over the last 30 years or so, American companies have sought to reduce their U.S. federal income tax liability by employing the tactic known as the "tax inversion." Typically, in an inversion transaction, one or more of the corporation's shareholders transfer stock to a controlled foreign corporate subsidiary in exchange for stock in the subsidiary. The goal is to shift corporate revenue from the United States to the jurisdiction to which the subsidiary is subject, presumably a country with favorable rates of corporate income taxation. It has recently come to light that corporate tax avoidance issues can arise in connection with a tax inversion transaction that are in addition to any question as to the validity of the inversion transaction itself. In proceedings involving Facebook's inversion transaction shifting a large portion of its tax base to Ireland, the Internal Revenue Service is seeking the production of books and records from Facebook with the object of determining whether Facebook improperly avoided U.S. income tax on its royalty by undervaluing the assets transferred to its Irish subsidiary as part of its inversion transaction. Facebook's inversion consisted of a corporate restructuring in 2009-2010 by which the corporation, under the "2010 Agreement," transferred to its Irish subsidiary the rights associated with its worldwide business outside of North America. That is, Facebook transferred its U.S. user base outside the United States and Canada to its Irish subsidiary, thereby shifting its online platform to the subsidiary. As one of the multinational corporations that has carried out inversion tax avoidance transactions and has thereby attracted the IRS's scrutiny (Amazon and Microsoft are also under investigation as to their transfer pricing), Facebook now faces the allegation that its tax adviser, Ernst &

Young, undervalued by billions of dollars the intangibles that it transferred to its Irish subsidiary. Facebook's return for 2010 reported royalty income resulting from its transfers of intangible assets to a controlled foreign corporation, Facebook Ireland Holdings Unlimited. In valuing these transfers for income tax purposes, Ernst & Young proceeded on the theory that each category of intangible assets (user base, online platform, and marketing intangibles) could be valued on a stand-alone basis. The IRS finds this approach to be problematic in that the categories are interrelated, and is conducting its examination under the authority of § 482 of the Internal Revenue Code of 1986, which permits the IRS to allocate income and deductions among commonly controlled business entities as necessary to prevent tax avoidance. The IRS informed Facebook that it was considering the retention of experts to assist in its examination but claimed that, due to budgetary constraints, it could not begin the process until after October 1, 2015; the IRS requested Facebook to agree to extend the time for the running of the statute of limitations, but Facebook refused. The IRS then issued three Information Document Requests, but Facebook's response was minimal (Facebook explained that under its narrow construction of the IDRs, the documents subject to the requests were limited to those reviewed by both Facebook U.S. and Facebook Ireland; Facebook also informed the IRS that if it wanted a more comprehensive response, it would have to start over with a new set of IDRs). In order to comply with the statute of limitations, the IRS served Facebook with a summons, seeking the information that Facebook had failed to supply. In April, 2016, the IRS issued ten additional IDRs. Facebook failed to provide any of the

requested documents and records. With the statute of limitations due to expire on July 31, 2016, the IRS issued six additional summonses seeking the information that had not been supplied. These summonses were personally served on June 1, 2016, on David Wehner, Facebook's chief financial officer, with a due date of June 17, 2016. Facebook failed to comply with the summonses, and Mr. Wehner stated, "Facebook complies with all applicable rules and regulations in the countries where we operate." On July 6, 2016, the IRS filed a petition in the U.S. District Court for the Northern District of California, *United States v. Facebook, Inc.*, Case No. 3:16-cv-03777 (N.D. Cal. petition filed July 6, 2016), asking the court to enforce the summonses. With the preliminary sparring over, this soap opera appears to be headed for a showdown.

#### **8. DUPONT THROWN BACK INTO OVERTIME CLASS ACTION: A**

federal appeals court reversed a decision letting DuPont off the hook in a class action made up of workers who want overtime pay for "donning and doffing" uniforms and safety equipment before and after their shifts. The U.S. Court of Appeals for the Third Circuit held in *Smiley v. DuPont* that the district judge wrongly concluded that the Fair Labor Standards Act allowed DuPont Co. to avoid paying overtime by compensating employees for their lunch period and other breaks. DuPont had argued that compensation for the employees' breaks -- three half-hour periods over a 12-hour shift -- made up for the unpaid half-hour to hour-long uniform changing and preparation time outside of their shifts. The Third Circuit disagreed on the basis that break pay was already a part of the employees' standard compensation. "Nothing in the FLSA authorizes the

type of offsetting DuPont advances here, where an employer seeks to credit compensation that it included in calculating an employee's regular rate of pay against its overtime liability," Senior Judge Marjorie Rendell wrote in the court's opinion. Attorneys' representing the employees, called the Third Circuit's ruling a victory for workers living paycheck to paycheck. The ruling went a long way in clarifying employers' ability, or lack thereof, to avoid compensating for overtime through paying for breaks. It is a decision that squarely addresses whether under the FLSA an employer is entitled to take a credit. In formulating its ruling, the Third Circuit cited its 2005 decision in *Wheeler v. Hampton Township*. In that case, the court ruled that it was improper for *Hampton Township* to voluntarily include non-work pay in its standard rate calculation. "It sought to offset compensation it was required to include in the regular rate, but did not, with compensation it voluntarily chose to include in the regular rate," Judge Rendell said. DuPont argued that the FLSA's failure to explicitly prohibit offsetting means it is permitted. While it is true that the statute does not explicitly set forth this prohibition, the policy rationales underlying the FLSA do not permit crediting compensation used in calculating an employee's regular rate of pay because it would allow employers to double-count the compensation," Rendell said.

**9. PROTECTING THE DIGNITY OF THE AMERICAN WORKFORCE:** A robust workers' comp system is a critical lifeline for every working American. This issue goes to the heart of what it means to be, and stay, middle-class in America: that an injury or illness sustained while trying to make a living shouldn't cost you everything. This is not a new issue.

Nearly 100 years ago, Frances Perkins understood the fundamental need to secure workers' comp benefits for all American workers. Frances was the first woman to serve in a president's Cabinet, and has been the gold standard for all of us who have had the honor to hold this office. Her dedication to workers' compensation started before President Roosevelt took office, and her work to collaborate between state and federal labor agencies increased individual state reforms and access to programs for thousands of workers. This kind of influence -- rooted in a deep understanding that workers' comp was a fundamental part of the social compact -- has defined the Labor Department's efforts in this space for decades. We see wide variation of state policies and a race to the bottom, even though there is little evidence that stronger workers' comp laws influence businesses' decisions about where to set up shop. Winning the "geographic lottery" can mean the difference between recovery and poverty. We see employers paying the lowest rates for workers' comp since the 1970s, shifting those costs to workers, their families, and their communities. We see other public benefit programs like Social Security Disability Insurance and Medicare forced to pick up the slack, even when those programs are under considerable stress. These conditions make it so high-hazard employers have fewer incentives to eliminate workplace hazards and actually prevent injuries and illnesses from occurring. That means that the families of workers who get injured, as well as safety net programs, effectively subsidize high-hazard employers. Our current system -- or lack thereof -- is a result of choices people made. We have the power to make it work better for working people. We have the power to summon some first principles for

what it means to work in America. A social contract that works for everyone starts with a conversation rooted in our shared values. First, that a workplace injury should not be a pathway to poverty. Second, that, whenever possible, it is better for workers to get the care and time they need to recover so they can get back to work. Third, thoughtful research and an innovative spirit can find ways to improve care without skyrocketing costs. In the words of President Obama at the Worker Voice Summit last year, “If you work hard in America, you have the right to a safe workplace. And if you get hurt on the job, or become disabled or unemployed, you should still be able to keep food on the table.” The potential solutions may be complicated, but the values behind them are not. Here in the most prosperous nation on earth, getting hurt at work should never be a pathway to poverty. The Department of Labor’s blog contains a booklet entitled “Does the Workers’ Compensation System Fulfill Its Obligations to Injured Workers?” To read the informative booklet visit:

<https://www.dol.gov/asp/WorkersCompensationSystem/WorkersCompensationSystemReport.pdf>.

#### **10. IRS WEBINAR: ACA OUTREACH FOR STATE AND LOCAL**

**GOVERNMENT EMPLOYER COMMUNITY:** There is a live webinar taking place on Thursday, October 20th at 2 p.m. ET presented by the ACA Office and TE/GE Counsel to address governmental entities' concerns and needs as they relate to ACA information reporting requirements. [Register for this event](#) to learn about:

- Determining Applicable Large Employer (ALE) status
- Identifying full-time employees
- Defining hours of service
- What is Minimum Essential Coverage?
- E-Filing of information returns
- 2016 filing season corrections and replacements
- Penalties and relief
- TIN solicitation
- Changes to forms & instructions for Tax Year 2016
- Questions and answers

#### **11. 46TH ANNUAL POLICE OFFICERS' AND FIREFIGHTERS'**

**PENSION TRUSTEES' SCHOOL:** The 46th Annual Police Officers' & Firefighters' Pension Trustees' School will take place November 2 through 4, 2016. 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 Radisson Resort, Celebration, (Orlando) Florida Please continue to check the FRS website for updates regarding the program at [www.myflorida.com/frs/mpf](http://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.

**12. SIGNS TO GET YOU THROUGH THE DAY:** Ban pre-shredded cheese, make America grate again.

**13. PARAPROSDOKIAN:** I was going to give him a nasty look, but he already had one.

**14. TODAY IN HISTORY:** In 1845, Texans ratify a state constitution and approve annexation, making Texas the 28<sup>th</sup> American state.

**15. 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.

**16. 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>.

**17. REMEMBER, YOU CAN NEVER OUTLIVE YOUR DEFINED RETIREMENT BENEFIT.**