



CYPEN & CYPEN
NEWSLETTER
for
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Never Forget September 11, 2001
and
Always Remember May 2, 2011

1. MIAMI BEACH TO COPS: TO GET ZIKA WORKERS' COMP, SHOW US SPECIFIC MOSQUITO THAT BIT YOU: In a piece from the *Miami New Times*, now it appears that applying for Zika-related workers' compensation with the City of Miami Beach might be straight-up impossible. In a letter sent to the Miami Beach Police union

president, City Manager Jimmy Morales said cops who want the city to pay their hospital bills will have to pinpoint the exact Zika-carrying mosquito that bit them. "He must show that the exposure/bite took place while on duty and identify the specific infected mosquito," Morales wrote in the letter. It is more than an academic question for some Miami Beach cops. At least two officers have Zika and are certain they caught it while on patrol in the Zika hot zone, says Bobby Jenkins, head of Miami Beach's police union. The first officer, Michelle Sayegh, lives in Broward County, miles from either of the state's two Zika "active transmission zones," which are both in Miami-Dade County. Sayegh works as a cop on Ocean Drive, well within Miami Beach's Zika zone. The police union says that Sayegh was initially granted workers' compensation but that it was yanked from her days later. The second Zika-positive cop, a 20-year veteran, was denied outright. In most cases, employees must pay hospital bills for workers who are injured or become ill while on the job. Jenkins accuses the city of holding its employees to an insane standard to prove they caught Zika at work. The outcome of the fight could have big implications nationally. Labor lawyers warn the first few Zika workers' comp cases in Florida could set a precedent for tropical-disease cases across the nation. The police union provides its members medical insurance. But Jenkins says the two cops with Zika were forced to take sick leave and pay for any of their deductibles. Sayegh was later given her sick days back and placed on paid administrative leave, but Jenkins says the case is more about setting a precedent for all city employees, not just Sayegh or the police department. "If we set

the precedent for Zika, no one is gonna take care of it," Jenkins said. He said he has been fighting Miami Beach for two months to get the city to "show benevolence" and develop a process for its employees to get their hospital bills paid if they catch Zika at work. He sent the city a letter demanding changes by Monday, October 31, but the city did not respond until recently. A spokesperson for the Fraternal Order of Police could not immediately comment on Morales' letter. Jenkins himself could not be reached. The city, however, says it is basically impossible to prove that either cop caught Zika on duty. In his letter to Jenkins, Morales said the two cops have not sent the proper medical documents to qualify for workers' comp in the first place. He also said that the city has received "limited/insufficient" medical records from the two cops -- that both officers have not released their records in writing to the city, and one officer has not submitted any test results. Morales also castigated the union for blowing the situation out of proportion. In Jenkins' letter, he stated that infection risks for first responders were "exponential in comparison to the rest of the population," a statement that Morales said was untrue. Instead, he said, Miami Beach residents are forced to deal with the brunt of the virus' effects. He also said the two police officers are not the only city employees who have caught Zika. "To reiterate, unlike heart conditions, there is no presumption that Zika is an occupational disease," Morales wrote. "Miami Beach is applying the workers' compensation law properly, and, based on the existing workers' compensation statutes, a denial of both known recent claims is warranted." He then added, "If the Claimant can produce the proper

medical and scientific evidence which is absent at this time, then we will obviously reconsider." So if you work on the Beach and want to get workers' comp for Zika, you better hope the next mosquito that bites you leaves its information before flying away. Or, perhaps, a mosquito registration program would work.

2. SOCIAL SECURITY: MORE QUESTIONS THAN ANSWERS?:

Writing in the Florida Public Pension Trustees Association's Newsletter, Kurt Czarnowski says the Social Security program has been in place for more than 81 years now. But, despite its age and economic impact, a number of myths and misunderstandings still exist about its operation. Among the biggest areas of misunderstanding is how the receipt of a public pension based on work not covered under the program impacts someone's ability to collect Social Security benefits. Two provisions, the Windfall Elimination Provision and Government Pension Offset, potentially impact people in this position. Incidentally, WEP and GPO are not mutually exclusive, and someone can be affected by just one or the other, or by both at the same time. The Windfall Elimination Provision affects individuals who have earned a pension from working for a government agency where they did not pay Social Security taxes, but who also worked at other jobs where they paid Social Security taxes long enough to qualify for a Social Security retirement or disability benefit. It may also affect an individual who earned a pension in another type of job where he/she did not pay Social Security taxes, such as work in a foreign country. The good news is that as long as someone has worked under Social

Security for at least ten years, *i.e.*, has earned 40 Social Security credits, then he will always receive something each and every month from Social Security. The bad news is that the amount that the person receives will likely be less than it would have been if he did not receive the public pension. Under the WEP, the Social Security Administration is required to use a different, and admittedly, less generous formula to compute a person's monthly Social Security benefit amount. What is the rationale behind the WEP? Well, Social Security benefit amounts are figured with a weighted benefit formula that gives proportionately higher benefits to workers with low lifetime earnings. However, when computing a person's monthly Social Security benefit, the Social Security Administration considers only earnings covered under Social Security. As a result, a worker with a substantial period of non-covered work appears to have lower lifetime earnings than he actually had. By adjusting the benefit formula, the WEP prevents workers who receive both Social Security and a pension based on non-covered work from receiving the advantage of the weighted benefit formula. However, workers with relatively low pensions are protected because the reduction in the Social Security benefit under the modified formula cannot be more than one-half of the pension attributable to earnings that were not covered by Social Security. WEP applies to all benefits based on the retired or disabled worker's earnings. It does not apply to survivors benefits. In addition, there are several exclusions to WEP, and some of them are:

- WEP does not apply to federal workers hired after December

31, 1983.

- WEP also does not apply to employees of nonprofit organizations that were exempt from Social Security coverage on December 31, 1983, and became mandatorily covered under Social Security on January 1, 1984.
- It does not apply to individuals who receive pensions based on railroad employment, or in cases when the only work on which an individual did not pay Social Security taxes was performed before 1957.
- Finally, a person with 30 or more years of “substantial” earnings under Social Security is also exempt from the WEP. For additional information, see the WEP Fact Sheet, <http://www.socialsecurity.gov/pubs/10045.html> and/or visit the GPO/WEP website: <http://www.socialsecurity.gov/gpo-wep/>.

(November, 2016).

3. PENSION LIABILITIES FOR 50 LARGEST LOCAL

GOVERNMENTS JUMP 192% SINCE 2005: Pionline.com reports the adjusted net pension liabilities for the 50 largest local governments totaled \$367 billion in fiscal year 2015, up 192% from 2005, said a report from Moody’s Investors Service. Of the 50 municipal entities reviewed, 32 had greater adjusted net pension liabilities than net direct debt in 2015, up from 14 in 2005, Moody’s estimated. The median adjusted net pension liability compared to all governmental revenues across the 50 entities was 147% in 2015, up from 70% 10 years earlier. Those with the highest adjusted net pension liabilities as

a percentage of 2015 operating revenue were Chicago at 719%, followed by Dallas at 549%, Phoenix at 434%, Houston at 414% and Los Angeles at 407%. Local governments reporting the lowest adjusted net pension liabilities as a percentage of operating were Wake County, N.C., at 22%; Mecklenburg County, N.C., 25%; Washington, D.C., 38%; Cypress-Fairbanks Independent School District, Houston, 52%; and North East Independent School District, San Antonio, 56%. Regarding pension contributions, the 50 local governments contributed a total of \$17.6 billion in 2015, up from \$7.4 billion in 2005. The median pension contribution was 5.2% of all governmental revenues in 2015, compared to 3.6% in 2005. Only 24 of the 50 entities surveyed contributed enough to stem unfunded pension liability growth. Moody's expects adjusted net pension liabilities to increase 6% in fiscal year 2016 and another 31% in fiscal year 2017 due to poor investment performance in 2015 and 2016, and lower discount rates.

4. DO EMPLOYERS NEED TO ACCOMMODATE IF THE

EMPLOYEE DOES NOT ASK?: Most employers are aware of their obligation to explore reasonable disability accommodations when an employee asks for such a measure. But, what if the employee never asks? A new decision out of the United States Court of Appeals for the Eighth Circuit raises the concerning possibility that an employer could indeed be held liable for failing to provide a disability accommodation even if the employee never requested one according to *International Foundation of Employee Benefit Plans*. In that case, a

respiratory therapist at a North Dakota hospital took a leave of absence to undergo spinal surgery. After the surgery, she returned to her job with lifting and work hours restrictions. Not long after her return, the hospital reminded employees of the need to complete a CPR certification test. The respiratory therapist took and passed the written portion of the test, but notified her employer that she could not complete the physical portion until cleared by her physician. Because CPR certification was an essential function of the respiratory therapist position, the hospital terminated her employment. The employee sued under the Americans with Disabilities Act, claiming that the hospital should have allowed her additional time to obtain CPR certification, or transferred her to another position that did not require this certification. In response, the employer noted that the respiratory therapist never requested any such accommodations. The court sided with the employee, determining that a jury could reasonably conclude that she had sufficiently "made her employer aware of the need for an accommodation" -- even if she did not actually request one -- when she informed the hospital of her surgery and resulting limitations. The court reasoned that an employee is not required to "invoke the magic words reasonable accommodation" to trigger the employer's obligation to explore the need for a reasonable accommodation through the interactive process. ADA issues present many challenges and employers should always be alert and review ADA best practices. Following this case, an employer should not simply wait for an accommodation request. Rather, an employer should begin the interactive process as soon as it learns that the employee has a

physical or psychological condition that may be impacting his or her job performance. This has always been a best practice, but is now backed up by the threat of possible ADA liability if not followed. Determining whether a particular situation raises the need to engage in the interactive process can be tricky, and employers are well advised to seek legal counsel when unsure of whether they may have duties to accommodate.

5. CAN PENSION PLANS HELP THE ECONOMY?: Much of the discussion surrounding defined benefit pension plans has centered upon plan level funding issues -- discount rates, liabilities, contribution requirements and participant income security. This discussion has reinforced concerns about the future of DB pensions: underfunding, frozen plans, 401(k) conversions, and little growth in new pension plans offered by employers according to benefitspro.com. These factors, while important, represent “micro,” or plan-level issues and do not paint a complete picture of the role of DB pensions. What should not be lost in the discussion are the potential beneficial impacts of the DB pension system in the overall, or “macro” US economy. Below, are several possible macro benefits of DB pension plans and how pension plans can help the economy.

- With a market value of \$8 trillion at the end of June 2016, DB pensions, through employer contributions and investments, represent in aggregate, a significant source of savings for the future. These savings can then lead to higher levels of long-

term business investment and job growth. Some of these pension-related savings do complement other forms of personal savings that would otherwise be done by households and individuals. These alternative savings would include 401(k) plans, IRAs, taxable mutual funds and savings accounts. Even accounting for these alternative savings, pension plans still provide a significant source of savings for the economy. Just as importantly, since DB pensions provide greater income certainty to beneficiaries at retirement, they can provide a more stable form of savings than vehicles that are subject to market volatility.

- Beneficiaries are likely to spend most of their DB pension income on goods and services, since they have already saved for their retirement through pension contributions and other savings vehicles such as 401(k)s. This spending flows to the bottom line of increased economic growth. As an example, a studies found that household disposable income from pensions averaged about 5.5% of total United States disposable personal income. Applied to US disposable personal income of \$14.1 trillion as of August 31, 2016, pension-related household disposable income totaled approximately \$775 billion. Of this \$775 billion, it can be estimated that at least 80%, or \$620 billion, is spent in the US economy. Taken further, this spending leads to what is known in economics as a “multiplier” effect, as it

flows through the economy. An example of this multiplier would be if a beneficiary receives \$100 in retirement income. If the person spends \$80 (80%) of this amount, the multiplier effect is to eventually inject 5 times that original amount, or \$500, into the economy. In addition, spending can also support job growth and revenues. A recent study estimated that DB pension spending supported 7.1 million jobs and generated \$189.7 billion in tax revenue in 2014.

- **Infrastructure and Renewable Energy:** Infrastructure includes bridges, highways, rail, airports and utilities. Increased Infrastructure spending has been endorsed by both presidential candidates and is expected to be front and center for fiscal policy going forward. The California Public Employees' Retirement System has invested \$3 billion in both US and non-US infrastructure, including a 10% stake in a 157 mile Indiana toll road in May 2016. In addition, the California State Teachers' Retirement System has committed about \$3 billion to infrastructure. Most direct infrastructure investing has been done by public pension funds; private pension investing has generally been made through private infrastructure funds. US infrastructure investment in general has been hindered by competition from the municipal bond market.

However, lower returns in the public markets, governmental partnerships and the prospect of long-term steady cash returns have

the potential to increase pension investment in this sector, benefiting both investors and the economy. There has also been increasing interest by DB pension plans in renewable energy, including solar and wind projects. According to Pensions & Investments, in December 2014, CalSTRS announced plans to more than double its clean energy and technology investments to \$3.7 billion over the next five years. In addition, the Oregon Public Employees Retirement Fund announced in December 2015 it will increase infrastructure and renewable energy investments with a new \$400 million commitment. In summary, DB pensions can have a meaningful economic and social impact by increasing the overall level of savings, investment and spending in the US economy. It is important to note that when measuring these effects, they should be compared to the impact of other retirement savings vehicles. However, pensions do provide a more certain income stream and longer term investment horizon than most other forms of retirement savings and can therefore provide ongoing benefits to economic growth and development.

6. NEW LAW SETS W-2 FILING DEADLINE; SOME REFUNDS

COULD BE DELAYED: A new federal law moves up the W-2 filing deadline for employers and small businesses to January 31. The new law makes it easier for the IRS to find and stop refund fraud. It also delays some taxpayer refunds. Those taxpayers claiming the Earned Income Tax Credit or the Additional Child Tax Credit will not see refunds until February 15, at the earliest according to the Internal Revenue Service.

Here are some key points:

- **Protecting Americans from Tax Hikes Act.** Enacted last December, the new law means employers need to file their copies of Forms W-2 by January 31. These forms also go to the Social Security Administration. The new deadline also applies to certain Forms 1099. Those reporting nonemployee compensation such as payments to independent contractors submitted to the IRS are due January 31. Employers have long faced a January 31 deadline in providing copies of these forms to their employees. That date will not change.
- **Different from past deadline.** Employers normally had until the end of February, if filing on paper, or the end of March, if filing electronically, to send in copies of these forms. The IRS is working with the payroll community and other partners to spread the word.
- **Helps stop fraud or errors.** The new January 31 deadline will help the IRS to spot errors on returns filed by taxpayers. Having these W-2s and 1099s sooner will make it easier for the IRS to verify legitimate tax returns and get refunds to taxpayers eligible to receive them. The changes will allow the IRS to send some tax refunds faster.
- **Some refunds delayed.** Certain taxpayers will get their refunds a bit later. By law, the IRS must hold refunds for any tax return claiming either the Earned Income Tax Credit or Additional Child Tax Credit until Feb. 15. This means the whole refund, not

just the part related to the EITC or ACTC.

- **File tax returns normally.** Taxpayers should file their returns as they normally do. The IRS issues more than nine out of 10 refunds in less than 21 days. However, some returns may need further review. Whether or not claiming EITC or ACTC, the IRS cautions taxpayers not to count on getting a refund by a certain date. Consider this fact when making major purchases or paying debts.
- **Use IRS.gov online tools.** Starting February 15, the best way to check the status of a refund is with the Where's My Refund? tool on IRS.gov or the IRS2Go Mobile App.

Taxpayers should keep a copy of their tax return. Beginning in 2017, taxpayers may need their Adjusted Gross Income amount from a prior tax return to verify their identity. They can get a transcript of their return at www.irs.gov/transcript.

7. MYTHS AND FACTS ABOUT SOCIAL SECURITY'S DISABILITY

PROGRAM: Social Security Matters blog has given us four myths and facts about Social Security's Disability Program:

- **Myth:** I am young and healthy, I do not have to worry about disability.

Fact: Disability is unpredictable. More than one in four 20-year olds becomes disabled before reaching retirement age.

- Myth: Most Social Security beneficiaries are not really disabled.

Fact: The Social Security Disability Program provides benefits to disabled workers who can no longer work due to a disability. Because Social Security's eligibility requirements are so strict, our disability beneficiaries are among the most severely impaired people in the country.

- Myth: If you become disabled by a serious rare disease, you still have to wait a long time for disability benefits.

Fact: Through SSA's Compassionate Allowances, Social Security provides benefits quickly to applicants whose medical conditions are so serious that their conditions obviously meet disability standards.

- Myth: Social Security benefits are passed on your last seven years of earnings.

Fact: SSA bases Social Security benefits on your lifetime earnings. SSA adjusts or "index" your actual earnings to account for changes in average wages since the year the earnings were received. Then Social Security calculates your average indexed monthly earnings during the 35 years in which you earned the most. SSA then applies a formula to those earnings and arrives at your basic benefit, or "primary insurance amount."

8. FUN WITH WORDS: When a clock is hungry it goes back four seconds.

9. PARAPROSDOKIAN: If you can smile when things go wrong, you have someone in mind to blame.

10. TODAY IN HISTORY: In 1919, first observance of National Book Week.

11. 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.

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RETIREMENT BENEFIT.