

LEGAL ALERT

TO: All School District Clients

FROM: Keane & Beane, P.C.

RE: State Early Retirement Incentive

DATE: June 10, 2010

From time to time, Keane & Beane P.C. will issue a legal alert to our clients to keep them informed of important changes or updates in the law. The State Legislature has passed and the Governor has signed Chapter 105 of the Laws of 2010. This Chapter provides for a temporary retirement incentive for State employees. It also provides for local governmental units, such as school districts, to participate in this Early Retirement Incentive (hereinafter "ERI"), at the discretion of the legislative body. This legislation is time sensitive. We offer the following to provide a base of information for each school district board of education to determine whether it wishes to exercise its discretion to offer this ERI:

1. Members of the Police and Fire Retirement Systems are not included because of the existing twenty (20) year retirement plan. Members of other segments of the Retirement System (both the ERS and TRS) are eligible.

2. The ERI has two (2) parts:

(a) Part A provides participants with one (1) additional month of service credit in the Retirement System for each year of service as of the date of retirement not to exceed thirty-six (36) months.

(b) Part B provides the 55/25 option offered solely to "NYSUT" members earlier this year. Tier 2, 3 or 4 members who are at least 55 years of age and who have at least 25 years of service may retire without the statutory benefit reduction. As you may know, the

NYSUT 55/25 plan is currently under challenge in the Courts. No resolution of the litigation has been announced as of yet.

(c) Employees may only choose to receive the ERI under Part A or Part B. Employees cannot choose to receive both incentives.

(d) A school district can opt to participate in Part A, Part B, both or not to participate at all.

3. Eligibility

(a) Part A – Which employees are eligible is to be determined at the discretion of the employer (excludes agency heads, chief school administrators who participate in the Teachers Retirement System and elected officials). Employers that elect to offer the incentive under Part A must target positions as eligible for the incentive. Additionally, employees wishing to take advantage of this incentive must be age 50 or older with at least 10 years of service, or otherwise eligible to retire.

(b) Eligibility under Part A is targeted to positions that can be eliminated for reasons of economy, consolidation, abolition or curtailment of governmental activities as determined by the employer. In the alternative, a position may be targeted without elimination, if the employer can demonstrate savings of at least one-half of the total amount of the base salary of employees who received the ERI for the two (2) years subsequent to the ERI. Employers are required to file a list of the names, Social Security Numbers and Retirement System registration numbers with the Retirement System for all employees eligible for Part A. Where more employees opt to retire under Part A of the ERI than the number of targeted positions in a particular title, the determinant as to who will be eligible will be based upon seniority. Please see the attached sample Part A Eligibility List.

(c) Part B – Employees must be at least age 55 on the effective date of retirement with at least 25 years of service credit, or otherwise eligible to retire, in order to be eligible for this incentive (except for agency heads, chief school administrators who participate in the Teachers Retirement System and elected officials, who are ineligible). All other employees (of employers that elect to offer the incentive under Part B) who meet the age and service requirements and retire during the open period established by their employers are eligible for this incentive unless the chief executive officer or the governing board determines that the employees' positions are critical to the maintenance of public health and safety. Employers must submit a list of excluded employees by July 1, 2010 in order to deny this incentive to otherwise eligible employees. School districts that wish to participate in Part B must act by resolution no later than July 1, 2010.

(d) In order to be eligible under Part A or B, an employee must be in active service. Active services means being on payroll as of February 1, 2010, and through to the date

of retirement. Leave with pay is deemed active service as is approved leave without pay not to exceed twelve (12) weeks from February 1, 2010 to the commencement of the open period. For school districts, the time subsequent to the end of June 2010 through August 31, 2010 for employees employed on a school year basis also constitutes active service so long as they are otherwise in active service on February 1, 2010.

4. Open Period: The employer must designate an open period of no less than thirty (30) and no more than ninety (90) days. The open period may not go beyond August 31, 2010 for school districts (December 31, 2010 for other local governmental units). The first day of the open period is referred to as the "commencement date". The commencement date can be any day after the effective date of the legislation (June 2, 2010).

5. A participating school district employer must pass an adopting resolution. Participating school districts must adopt such resolutions by July 30, 2010 (August 31, 2010 for other local governmental units). A certified copy of the resolution must be filed with the appropriate Retirement System within seven (7) days of its adoption along with an affidavit indicating the payment option selected by the employer (one lump sum payment or five annual payments). Please see attached sample Resolutions for Part A and Part B and sample Employer Affidavits for Part A and Part B.

6. If the employer offers a separate retirement incentive through a collective bargaining agreement the employer must decide if employees who opt for the ERI under Part A will be permitted to collect the local incentive. As such, the employer affidavit that must be submitted with the adopting resolution must also state whether the school district employer will permit the school district's employees to receive the local incentive in addition to the ERI under Part A. If not, the employees who wish to be eligible for the ERI under Part A must waive the local incentive and such waiver must be filed with the Retirement System. Additionally, employers that do not allow their employees to collect both the ERI under Part A and the local incentive must file a list of the names, Social Security Numbers and Retirement System registration numbers of those employees, along with their waivers, with the Retirement System. It appears from the statute that the restrictions regarding local retirement incentives only applies to the ERI under Part A. Should you have questions regarding whether particular provision of your collective bargaining agreement constitutes a local retirement incentive, please contact Keane & Beane, P.C. Please see the attached sample Affidavit for Part A, Employee Waiver and Employer Certification Form and List of Members Eligible for a Separate, Employer-Provided Retirement Incentive.

7. An employer which opts to participate in the ERI must pay the cost in either one lump sum in 2012 or may pay the amount due to the Retirement System in five (5) annual installments (including interest) beginning in 2012.

8. According to the Governor's Memorandum in support of the legislation, the long term savings under the bill "would be off set by near term costs." Those costs have been estimated by the Retirement System, as referenced in the Governor's Memorandum, as follows:

- (a) ERS Part A: 60% of employee's final average salary;
- (b) ERS Part B: 110% of employee's final average salary;
- (c) TRS Part A or B: 50-70% of the employee's final average salary.

Cost Estimate Worksheets for both Part A and Part B, issued by the Retirement System, are attached for your use.

Should you have any questions with regard to the ERI, please call Ronald A. Longo or William Kang of this Office.