

Table of Contents

CHAPTER 1. TYPES OF RETIREMENT PLANS

- § 1:1 Retirement plans, generally
- § 1:2 Defined benefit plans
- § 1:3 —Sound actuarial basis
- § 1:4 —Investment return
- § 1:5 —Other actuarial factors
- § 1:6 Defined contribution plans
- § 1:7 Defined benefit—Defined contribution debate—
General overview
- § 1:8 The DB/DC debate in depth
- § 1:9 Advantages of DB plans
- § 1:10 Advantages of DC plans
- § 1:11 Disadvantages of DB plans
- § 1:12 Disadvantages of DC plans
- § 1:13 Trends
- § 1:14 Cost considerations
- § 1:15 The economic impact of public pension plans
- § 1:16 The uncertainty continues
- § 1:17 Environmental, social, and governance (ESG)
considerations: The newest hot topic

CHAPTER 2. CONSTITUTIONAL PROTECTION OF RETIREMENT BENEFITS

- § 2:1 Protected rights, generally
- § 2:2 Gratuity theory
- § 2:3 Deferred compensation theory
- § 2:4 Mandatory vs. voluntary plans
- § 2:5 Equitable estoppel
- § 2:6 Contract theory
- § 2:7 State constitutions
- § 2:8 Varying state court views
- § 2:9 Use of accumulated leave
- § 2:10 Ownership of assets
- § 2:11 Actuarial impact of employment decisions

STATE AND LOCAL GOVERNMENT RETIREMENT LAW

- § 2:12 Changes in the law affecting contract rights
- § 2:13 Reduction of contribution rates
- § 2:14 Refusal to fund plan
- § 2:15 State-by-state analysis
- § 2:16 Equal protection
- § 2:17 Preservation of the tax status of the plan as a basis for decision-making
- § 2:18 Change in elements included in pension computation
- § 2:19 Procedural issues for adoption of retirement statutes
- § 2:20 Forfeiture
- § 2:21 Constitutional rights in plan investments
- § 2:22 Constitutional and fiduciary issues in plan administration

CHAPTER 3. SERVICE RETIREMENT

- § 3:1 Normal retirement defined
- § 3:2 Age discrimination
- § 3:3 In-service distribution
- § 3:4 Double dipping
- § 3:5 Uniformity of benefits not required
- § 3:6 Effect of overfunding on benefits
- § 3:7 Reemployment defined
- § 3:8 Vesting and vested rights
- § 3:9 Entitlement to postretirement accruals
- § 3:10 Benefit spiking
- § 3:11 Inclusion of leave payouts as compensation
- § 3:12 Correction of errors
- § 3:13 Filing a retirement application

CHAPTER 4. EARLY RETIREMENT

- § 4:1 Early retirement, generally
- § 4:2 Structure of early retirement benefits
- § 4:3 Early retirement incentives
- § 4:4 Age discrimination considerations
- § 4:5 Administrative considerations

CHAPTER 5. DEFERRED RETIREMENT OPTION PLANS

- § 5:1 DROP defined
- § 5:2 DROP history

TABLE OF CONTENTS

§ 5:3	Benefits of DROP
§ 5:4	DROP implementation
§ 5:5	Not a guarantee of employment
§ 5:6	Mandatory retirement
§ 5:7	Compensation rates for DROP
§ 5:8	Survivorship rights in DROP
§ 5:9	Ethics questions for trustees
§ 5:10	Tax implications of DROP
§ 5:11	BACK DROP
§ 5:12	Adopting a DROP plan
§ 5:13	Forfeiture still applies in DROP
§ 5:14	Related distributions

CHAPTER 6. SURVIVORSHIP

§ 6:1	Scope of survivorship rights
§ 6:2	Tax considerations
§ 6:3	Form of survivorship benefits
§ 6:4	Actuarial considerations
§ 6:5	Knowing selection of benefits; duty to inform
§ 6:6	Postretirement marital status
§ 6:7	Beneficiary restrictions
§ 6:8	Equal protection considerations
§ 6:9	Who is a “spouse?”
§ 6:10	Survivorship offsets
§ 6:11	Survivorship selections a property right
§ 6:12	Competing claims of survivors
§ 6:13	Perfecting the survivorship claim

CHAPTER 7. DISABILITY REQUIREMENTS

§ 7:1	Purpose of disability retirement
§ 7:2	Service vs. nonservice disability; presumptive illness
§ 7:3	Establishing the right to the presumption
§ 7:4	Rebutting the presumption
§ 7:5	Burden of proof of applicant
§ 7:6	Dealing with conflicting evidence
§ 7:7	Preexisting conditions
§ 7:8	Preentry physical exam
§ 7:9	Americans with Disabilities Act (ADA) considerations
§ 7:10	Different disability benefit levels

STATE AND LOCAL GOVERNMENT RETIREMENT LAW

- § 7:11 Judicial review of disability determinations
- § 7:12 Stress claims
- § 7:13 Comparison with workers' compensation
- § 7:14 Due process procedure
- § 7:15 Due process checklist
- § 7:16 Statute of limitations
- § 7:17 Rules of evidence and procedure
- § 7:18 Benefit offsets
- § 7:19 Re-examination and re-employment of disability retirees
- § 7:20 Termination of employment and estoppel
- § 7:21 Attorney's fees
- § 7:22 Exhaustion of administrative remedies
- § 7:23 Failure to follow procedures
- § 7:24 Intervening employment actions
- § 7:25 Sample disability retirement application materials—Disability retirement application checklist
- § 7:26 —Release of medical information
- § 7:27 —Reasonable accommodation form
- § 7:28 —Statement of disability by employer
- § 7:29 —Application for disability retirement
- § 7:30 —Physician report form
- § 7:31 Sample disability interrogatories
- § 7:32 COVID-19 federal benefits

CHAPTER 8. TAX TREATMENT OF DISABILITY BENEFITS

- § 8:1 Disability, generally
- § 8:2 Duty-related disability
- § 8:3 Presumptive disease
- § 8:4 Payment structure and tax implications

CHAPTER 9. DIVISION OF PENSION BENEFITS AS MARITAL PROPERTY

- § 9:1 Marital rights, generally
- § 9:2 Private sector rules under ERISA
- § 9:3 State law spendthrift provisions
- § 9:4 Survivorship rights
- § 9:5 End of the marriage as the crucial date
- § 9:6 Requiring spouses to live together
- § 9:7 Remarriage penalties

TABLE OF CONTENTS

- § 9:8 Rights of other beneficiaries
- § 9:9 Divorce rights in DROP accounts
- § 9:10 Disability benefits as marital property
- § 9:11 Exemption from claims of creditors
- § 9:12 Division among multiple spouses
- § 9:13 Following plan procedures
- § 9:14 Selection of beneficiaries
- § 9:15 Same-gender partner benefits
- § 9:16 Municipal ordinances and marital rights
- § 9:17 Effect of annulment

CHAPTER 10. DUTIES OF BOARDS OF TRUSTEES

- § 10:1 Absence of uniform regulation
- § 10:2 General trust principles
- § 10:3 Differing fiduciary powers
- § 10:4 Duty to conduct hearings
- § 10:5 Duty to determine funding requirements
- § 10:6 Modern portfolio theory
- § 10:7 Prudent investor rule
- § 10:8 Political decision-making; divestiture
- § 10:9 Legislative authority of plan boards
- § 10:10 Legislative preemption
- § 10:11 Illustrative Administration decisions
- § 10:12 It isn't the board of trustees' responsibility
- § 10:13 Breach of fiduciary duty as a defense to the employer's duty to contribute
- § 10:14 Use of fiduciary power for unrelated purposes

CHAPTER 11. UNDERFUNDED AND OVERFUNDED PLANS—OBLIGATIONS AND PRIVILEGES

- § 11:1 Funding, generally
- § 11:2 Ownership of plan assets
- § 11:3 Application of *Hughes* principles to public plans
- § 11:4 Failure to fund as required by law
- § 11:5 Dedicated tax revenues
- § 11:6 Transfer of plan assets
- § 11:7 Transfer from pension to insurance
- § 11:8 Failure to fund—A contrary view
- § 11:9 Accrual of claims

CHAPTER 12. THE PENSION PROTECTION ACT OF 2006

- § 12:1 Pension Protection Act, generally
- § 12:2 Early distribution penalty
- § 12:3 Insurance for retirees
- § 12:4 Differences in eligibility
- § 12:5 Unanswered questions
- § 12:6 The normal retirement age dilemma
- § 12:7 Retirement as a public safety officer
- § 12:8 Direct pay of insurance benefits
- § 12:9 Permissive service credit (airtime)
- § 12:10 Voluntary participation

CHAPTER 13. FIDUCIARY MANAGEMENT—THE SAN DIEGO EXPERIENCE; ETHICS ISSUES AMONG THE STATES

- § 13:1 The issue arises
- § 13:2 Origins of the issue
- § 13:3 The manager proposals
- § 13:4 Other cost considerations
- § 13:5 Looking for funding solutions
- § 13:6 Kroll report conclusions
- § 13:7 The fallout
- § 13:8 The California Supreme Court decides the issue
- § 13:9 Lessons learned
- § 13:10 Basic principles of fiduciary responsibility
- § 13:11 There is no such thing as a free benefit
- § 13:12 Benefits must be funded on a sound actuarial basis
- § 13:13 Independence is critical
- § 13:14 Sometimes the answer is “no”
- § 13:15 Avoiding self-interest
- § 13:16 It is not necessarily about bad motives
- § 13:17 Looking beyond California—Treatment of ethics issues in other states

CHAPTER 14. FIDUCIARY INSURANCE

- § 14:1 Fiduciary insurance, generally
- § 14:2 Who and what are the insureds?
- § 14:3 Insuring agreements

TABLE OF CONTENTS

§ 14:4	Exclusions
§ 14:5	Other insurance provisions
§ 14:6	Subrogation and waiver of recourse
§ 14:7	Subrogation
§ 14:8	Waiver of recourse
§ 14:9	Discovery period provision
§ 14:10	Change in control provision
§ 14:11	Notice and claims reporting provisions
§ 14:12	Selecting defense counsel
§ 14:13	Claims post termination
§ 14:14	Cancellation clauses
§ 14:15	The scope of defense
§ 14:16	Cyber attacks and insurance; practice tips

CHAPTER 15. CONSTITUTIONAL PROTECTION OF RETIREE HEALTH CARE

§ 15:1	Health care as guaranteed benefit generally
§ 15:2	Requirements for contract protection
§ 15:3	Vested rights
§ 15:4	Due process
§ 15:5	Comparison to private sector
§ 15:6	State constitutional provisions
§ 15:7	Diminution of rights
§ 15:8	Retirement benefits—Health care included
§ 15:9	Health care excluded as a retirement benefit
§ 15:10	Uneven decision-making by the states
§ 15:11	Government accounting standards for health care
§ 15:12	Estoppel principles
§ 15:13	OPEB checklist
§ 15:14	Implied contract
§ 15:15	State Cases Addressing Public Sector Health Benefits

CHAPTER 16. MILITARY CREDIT

§ 16:1	Veterans rights, generally
§ 16:2	Purchase of military credit
§ 16:3	Purpose of military credit
§ 16:4	Military pensions and other public pensions
§ 16:5	The HEART Act

CHAPTER 17. DRAFTING AN INVESTMENT CONTRACT

- § 17:1 Scope of chapter
- § 17:2 Investment policy
- § 17:3 Investment contract
- § 17:4 Risk considerations; standard of care
- § 17:5 Choice of law
- § 17:6 Alternative investments; dispute resolution
- § 17:7 Interrelationship with actuarial assumptions
- § 17:8 Fiduciary standards
- § 17:9 Defined contribution plan consideration
- § 17:10 Defenses to suit
- § 17:11 Model documents
- § 17:12 —Model investment contract
- § 17:13 —Model side letter
- § 17:14 —Model consulting agreement
- § 17:15 —Model investment policy
- § 17:16 Special consideration for defined contribution plan investment policies

CHAPTER 18. BANKRUPTCY/EXEMPTION OF PLANS FROM CLAIMS OF CREDITORS

- § 18:1 Scope of chapter
- § 18:2 Effect of spendthrift clause
- § 18:3 Bankruptcy protection in a 457 plan
- § 18:4 Bankruptcy and public plan benefits
- § 18:5 Bankruptcy litigation for fund as investor
- § 18:6 Sovereign immunity
- § 18:7 Bankruptcy and loan provisions
- § 18:8 Municipal bankruptcy
- § 18:9 Bankruptcy and impairment of contract

CHAPTER 19. COST-OF-LIVING ADJUSTMENTS

- § 19:1 Scope of chapter
- § 19:2 Challenges to COLA benefits
- § 19:3 Tax considerations
- § 19:4 COLAs come under attack

TABLE OF CONTENTS

CHAPTER 20. PUBLIC PENSION FUNDS AS LEAD PLAINTIFFS IN SECURITIES LITIGATION

- § 20:1 Securities Litigation Reform Act
- § 20:2 Case evaluation period
- § 20:3 Lead plaintiff selection
- § 20:4 Aggregation of plaintiffs' claims
- § 20:5 Effect of Private Securities Litigation Reform Act (PSLRA) activity
- § 20:6 Retirement fund impact on municipal securities
- § 20:7 Practice tip—Responding to an SEC audit
- § 20:8 —Model securities litigation policy

CHAPTER 21. FORFEITURE OF BENEFITS

- § 21:1 Forfeiture generally
- § 21:2 Forfeiture involving multiple public employers
- § 21:3 What is and what is not a forfeitable offense
- § 21:4 Forfeitures under federal statutes affecting state and local plans
- § 21:5 Do forfeiture laws violate the contracts clause?

CHAPTER 22. ESG AND THE POLITICS OF PUBLIC PENSION INVESTING

- § 22:1 Introduction
- § 22:2 The Department of Labor weighs in on private plans
- § 22:3 State courts and political limits on investing
- § 22:4 Recent legislative trends
- § 22:5 The focus on fossil fuels
- § 22:6 ESG in the courtroom
- § 22:7 Considerations for practitioners

Table of Laws and Rules

Table of Cases

Index