



# Retirement News Highlights

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## Commentary: Md. state retirees and prescription drugs

By Peta N. Richkus

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Two things happened the first week of September affecting thousands of state of Maryland retirement-eligible employees, tens of thousands more state retirees, and potentially the loss or preservation of prescription drug and other OPEB benefits of public employees around the country.

First, the Maryland Department of Budget and Management sent a certified letter, dated Sept. 1, 2019, to state retirees and retirement-eligible current state employees that raised more questions than it purported – and failed – to answer about a new law covering prescription drug benefit programs for Medicare-eligible retirees.

There is an immediate dilemma facing retirement-eligible state employees, the majority of whom can expect to be affected by the new law: SB 946: “State Prescription Drug Benefits — Retiree Benefits – Revisions.” Based on the historical rate of state employee retirements, this would include 7,000 or more who can be expected to retire in 2019.

While implementation of the new law has been stayed by preliminary injunction while a legal dispute, *Fitch et al v. State of Maryland et al.*, is being adjudicated (Case #1:18-cv-02817; Judge Peter J. Messitte, Maryland District Court), retirement-eligible employees may be eligible for what would then be a reduced benefit (as opposed to zero prescription drug benefits) only if they retire by the end of the year.

How exactly “retirement by Dec. 31, 2019” can be accomplished to meet both the requirements of the new law and the state’s personnel procedures is not as simple as it might seem. The DBM letter is not instructive, and the guidance from the state currently available online is either contradictory or incomplete.

Retirement-eligible state employees need to be proactive in identifying their options and considering to retire or not, by the end of September by some calculations.

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Second, U.S. District Court Judge Peter J. Messitte, who issued a preliminary injunction in October 2018 to halt the state’s termination of its retirees’ prescription drug plan, issued a new ruling in *Fitch v. Maryland* on Sept. 5 that sends both sides back to square one to respond to the passage of SB 946.

In addition to requiring a written description clarifying the current confusion regarding exactly how state employees who want and are eligible to retire before the Dec. 31, 2019, deadline are to do so, Messitte’s order provides: (1) the plaintiffs are to file an amended complaint challenging the new law, SB 946, within 90 days; and (2) all motions submitted in the case to date are moot, including the plaintiffs’ request for class certification as well as a separate motion to intervene to oppose certain aspects of the request for certification as submitted by the plaintiffs.

The status of OPEB, or “other post-employment benefits” (which are any retirement benefits a public employee is promised in addition to his or her pension) is increasingly becoming a subject of legal dispute around the country as governments at all levels seek to shed costs by shirking their responsibility to fully fund their retirement benefit obligations.

State of Maryland retirees and current employees hope that justice will prevail and that the prescription drug benefits that were promised as part of their compensation will be reinstated. Thanks to Messitte's insight and his preliminary injunction, these benefits are continuing — for the time being.

As to the dilemma facing retirement-eligible state employees – most but not all of the 7,000 or more state employees who can be expected to retire this year can anticipate being affected by SB 946. They should contact the State Retirement Agency as soon as possible to learn how each of the three provisions of the new law will impact them, and how to meet the eligibility requirements for SB 946 so that they can make the best decisions for themselves and their families and they can properly evaluate the pros and cons of retiring before the end of 2019.

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