New Disclosure Rules for Public Employers

In-House News:

New Disclosure Rules for Public Employers
By Jen Woods

As new accounting rules go into effect for public employers, lawyers can expect an influx of legal work.

The new disclosure rules require public employers to report the amounts of money they owe in post-employment benefits, including healthcare, life insurance, and dental coverage costs, for their current and future retired workers. In addition, employers will have to disclose how they plan to pay for benefits.

The new Government Accounting Standards Board (GASB) rules were implemented in part because employee pensions in the private sector have been on the decline. The new accounting rules, adopted by the private sector in 1992, will significantly impact many employers' financial outlooks. The disclosed figures will affect employers' credit rating scores, which will ultimately affect their ability to take out loans.

"The unfunded financial liability facing nearly every state and local government is huge, and yet many officials may not even know this new rule exists," said former Dallas Mayor Ron Kirk, now a partner in the public policy and public finance group of Vinson & Elkins, LLP. "I cannot overstate the seriousness of the economic impact this will have on governmental entities both big and small.

The size of the liability is going to astonish taxpayers and government officials, he added.

Some experts estimate that the total unfunded liability for retiree healthcare benefits for state and local governments is between $500 billion and $1.4 trillion.

The rise in healthcare costs has impacted state and local governments more than private employers because they offer more retiree benefits. About 77% of governments with more than 200 employees offer healthcare benefits to retirees, while only 36% of similarly sized private employers offer them, according to a recent Kaiser Family Foundation survey.

In addition, the cost of healthcare has increased dramatically for governments. The cost of providing employee healthcare increased by an average of 14.2% per year between 2000 and 2004—a fairly significant increase when compared with an average overall expenditure increase of 5.5% and an inflation rate of 2.4%—according to the results of a 2004 Fitch Ratings study.

Depending on the size of the public employer, the new rules will go into effect at different times. For instance, larger entities with annual revenues greater than $100 million must start disclosing their unfunded liabilities for post-employment benefits beginning December 15. For public employers with annual revenues of $10 million to $100 million, the new rules will go into effect after December 15, 2007. The smallest entities, those with annual revenues of $10 million or less, will begin reporting one year later, after December 15, 2008.

Attorneys, particularly those who specialize in public finance, compensation and benefits, labor, and taxes, can expect an increase in work as public employers begin to comply with the rules.

Like other firms, Nixon Peabody, which has extensive experience in public finance, SEC disclosure, employee benefits, labor relations, and health services, has developed an OPEB (other post-employment benefits) taskforce. The legal team will help public employers understand the implications of the new rules, as well as create strategies to manage OPEB challenges.

In preparation for the new disclosure rules, Nixon Peabody has held seminars and attended conferences on the issue. The firm is currently hosting "OPEB labs" with public employers nationwide. These meetings bring senior municipal managers from around the country together to discuss their situations.

Vinson & Elkins has also created an OPEB taskforce, which consists of 10 lawyers who specialize in corporate governance, public finance, public policy, employee benefits, and labor law. The legal team works directly with state and local leaders to help them evaluate financial obligations.

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