

Important Notice for Members and Employers Regarding the 55/25 Lawsuit

John F. Sullivan (as President of the Empire State Supervisors and Administrators Association) and Lorraine Gegerson (individually and as President of the Baldwin Supervisors Association) have brought a lawsuit against Governor Paterson, Comptroller DiNapoli as sole trustee of NYSLERS, and NYSTRS claiming the 55/25 incentive law (Chapter 45, signed 4/14/2010) is unconstitutional as written. The litigants seek a judgment directing that the incentive be made available to all NYSTRS and NYSLERS members who have attained age 55 and 25 years of service, not just those represented by NYSUT affiliated collectively bargained units. We have urged the case should be decided as promptly as possible for the benefit of all impacted parties.

Following the denial of their application for a preliminary injunction, the plaintiffs moved for a final judgment in their favor. All parties made their submissions in accordance with the filing schedule set by the Court. A decision is pending; however, it is not known how soon the Court will rule. **(There are no updates as of noon on July 23, 2010.)**

NYSTRS continues to accept retirement applications for those identified in Chapter 45. While we recognize the status of the lawsuit complicates decisions related to filing for retirement and district decisions, we have no legal basis to accept applications on a contingent basis nor do we have the authority to change the open periods and deadlines established by the statute. Consequently, it is critical our members and employers review and understand the information that follows.

Possible Outcomes of the Lawsuit

We see three possible outcomes to the lawsuit at this time. As of this writing, it is not possible to say which alternative the Court will adopt.

First, the Court could rule that Chapter 45 is constitutional and **can be implemented as written for all members who have attained age 55 and 25 years of service, provided their positions are represented by NYSUT affiliated collective bargaining units.** (Another possible outcome which would achieve the same outcome for such members would be for the Court to rule that any unconstitutionality only affects members who retire after the Court's decision is rendered. Members eligible under Chapter 45 as written who retire before the Court's decision will not be affected.)

Second, the Court could rule that Chapter 45 is unconstitutional because it is limited to positions that are represented by NYSUT-affiliated collective bargaining units. In such event, the Court could rule that the severability clause of Chapter 45 permits the constitutional defect to be cured by removing the limitation to such positions and **Chapter 45 can be implemented for all members who have attained age 55 and 25 years of service regardless of their representation.**

Third, the Court could rule that Chapter 45 is unconstitutional because it is limited to positions that are represented by NYSUT-affiliated collective bargaining units. In such event, the Court could rule that the severability clause of Chapter 45 does not permit the constitutional defect to be cured and **Chapter 45 cannot be implemented for any member.**

It cannot be predicted whether the Court's ruling, when issued will be the last word in the case or whether one or more of the losing parties will appeal that ruling to the appellate court - nor can it be predicted how long such an appeal might take.

Finally, a ruling by the Court in this case may not preclude future challenges to the constitutionality of Chapter 45 by, for example, a member who retires mistakenly thinking he or she will receive the incentive.

Considerations for Members

We recognize the case creates enormous uncertainty for members who might wish to retire with the incentive provided by Chapter 45. In the worst case, no member would be eligible to receive the incentive under Chapter 45 because of a ruling of unconstitutionality. Additionally, if this ruling is determined after a member's date of retirement, said retiree's benefit will be impacted by the lifetime retirement reductions currently provided for by statute.

The open period for Chapter 45 does not close until August 31, 2010. However, no benefit is payable for any period prior to retirement. It is important to remember that members can withdraw their retirement application with NYSTRS up to 14 days after their date of retirement.

Resigning from an employer is a separate and distinct action. If members plan to resign and retire under the 55/25 incentive, they should be aware resignations submitted to a school district can be rescinded only if rescission is permitted by the Board of Education.

An additional complication, though one which could work to the member's advantage, is that the Legislature has also enacted a second retirement incentive, Chapter 105 signed 6/2/10. If the member's employer elects to make Part A and/or Part B of Chapter 105 available to the member, those benefits would not be affected by an adverse decision in the lawsuit.

Members may wish to consult with their collective bargaining agent, their financial planners and/or their own attorneys so that they fully consider the risks of retiring and the possible consequences if there is an adverse outcome.

Considerations for Employers

With the recent signing of a second retirement incentive bill (Chapter 105, signed 6/2/2010), the pendency of the Chapter 45 litigation also creates potential uncertainty for employers considering electing Part A and/or Part B of the Chapter 105 incentive. This uncertainty arises because the cost of the benefit provided by Chapter 45 is socialized rather than paid on an employer by employer basis as in the case of the benefits provided by Chapter 105.

If Chapter 45 is constitutional as written or as extended to all members who have attained age 55 and 25 years of service, the cost of benefits conferred by Chapter 45 will be deducted from the cost of providing the Part A incentive to members entitled to benefit from Chapter 45.

If Chapter 45 is constitutional as written or as extended to all members who have attained age 55 and 25 years of service, the employer will not incur any direct cost for members who are entitled to the Chapter 45 incentive in the event the employer elects the Part B incentive.

On the other hand, if Chapter 45 is unconstitutional, there will be no deduction from the cost of the Part A incentive for such members and the employer will have to pay the full cost for such members if the employer elects the Part B incentive.