

LGPS Redundancy Paper for England & Wales

(13/04/2010) Read the below paper if you are in the LGPS and want to know your pension position in the event of redundancy or retirement in the interests of efficiency of the service.

Opposing reductions in compensation for early retirement due to redundancy - focus on the Local Government Pension Scheme in England & Wales

UNISON briefing paper ð updated April 2010

Background

We at the Pensions Unit are seeing a number of examples of employers adopting less generous pension policies on redundancy or retirement in the interests of efficiency of the service than could be the case and hence this paper seeks to both clarify the law whilst outlining our concerns to members and activists alike.

Overview

Members of the Local Government Pension Scheme (LGPS) have an absolute right to draw unreduced benefits on their employer either making them redundant or retired in the interests of efficiency of the service, subject to the member being at least 50 years of age.

This age limit will increase to 55 with effect from 1 April 2010 and is already 55 for new joiners from 1 April 2008.

Legislation in the shape of both The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and The Local Government (Early Termination of Employment)(Discretionary Compensation)(England and Wales) Regulations 2006 permit employers to either enhance pensions or provide compensation in the event of redundancy or retirement in the interests of efficiency of the service.

Service and pension enhancement explained further Enhancement of pension can be in the form of awarding extra years of pensionable service up to a maximum of 10 years or through awarding additional pension up to a maximum of £5000 per annum. Regulations 12 and 13 respectively of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 permit such options.

Regulation 12 also allows an employer to award extra years of

pensionable service up to six months after the person has left.

You should note that although many employing authorities take the view that awarding Compensatory Added Years on redundancy constitutes age discrimination and is hence in breach of the Employment Equality (Age) Regulations 2006 it is still perfectly possible for employing authorities to award extra pensionable service to active members under the terms of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

It should also be noted that it is possible for employing authorities to award both extra pensionable service and extra pension on redundancy or retirement in the interests of efficiency of the service.

Discretionary compensation payments explained further

We are seeing more and more employing authorities make a compensation payment instead of awarding extra years of service or extra pension.

The maximum award is 104 weeks pay but yet we have seen many examples of employing authorities paying out less than this, with up to 66 weeks of pay being a relatively common payout.

The overall limit of 104 weeks includes statutory redundancy pay (that the employer can enhance by basing it on an actual weeks pay).

Under the Regulations the employer cannot pay a compensation payment above the statutory redundancy payment, if added years are awarded under Regulation 12 and/or if extra pension is awarded under Regulation 13.

Employer's policy statements

Regulation 66 of The Local Government Pension Scheme (Administrative) Regulations 2008 require employing authorities to prepare a written statement of their policy in relation to both the exercise of its functions to increase total pensionable service and to increase the amount of pension payable.

Regulation 7 of The Local Government (Early Termination of Employment) (Discretionary Compensation)(England and Wales) Regulations 2006 requires each employing authority to publish and keep under review its policy for awarding discretionary compensation on redundancy or retirement in the interests of efficiency of the service.

A Policy Statement is simply guidance; each case has to be decided on its individual circumstances. A Policy statement should not include any

statement that the employer will never consider paying compensation up to the maximum allowed.

The Pensions Unit's concerns

We are concerned that many employing authorities are hiding behind the Employment Equality (Age) Regulations 2006 as an excuse not to award additional years of pensionable service on redundancy or retirement in the interests of efficiency of the service whereas the reality is that they can under Regulation 12 of The Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007.

The granting of additional years of pensionable service is generally a much more financially attractive option to members than simply receiving a compensation payment and hence it is vital that members and activists alike question their employing authority in scenarios where it is clear that they will not grant extra years of service on redundancy or retirement in the interests of efficiency of the service and the rationale is based on an incorrect understanding.

Furthermore representations should be made to employing authorities whom adopt a compensation policy which is far below the maximum of 104 weeks that Regulations allow.

It is important to remember that discretion cannot be fettered. In other words the employer cannot say they will always grant a pre determined level of compensation on a future redundancy or efficiency retirement.

In summary and our message to members and activists

Don't just accept employer excuses that they cannot award additional years of pensionable service or extra pension on redundancy or retirement in the interests of efficiency of the service because they can. Where however it is quite clear that an employer correctly understands the regulations but whose policy is quite clearly not to award additional pensionable service or pension, don't forget the fact that employers can pay compensation of up to a maximum of 104 weeks pay instead or increase the pension by up to £5000 per year.

Please get in contact with the Pensions Unit with examples of where you believe employers do not understand the law or are adopting positions which are clearly not particularly favourably so that we can try to assist where appropriate and build up more of a picture nationally.

It is also important that discretions are operated fairly between members. You should ensure that the policy is non discriminatory.

Contacts

Alan Fox, UNISON Pensions Officer, 020 7551 1514

Glyn Jenkins, UNISON Head of Pensions, 020 7551 1519