Information on Charter School Withdrawal Liability

Effective September of 2019, Act 72 of 2019 requires PSERS to calculate and collect a withdrawing employer's unfunded retirement benefit liabilities, i.e., the employer's "withdrawal liability." Prior to September 2019, when an employer terminated its participation in PSERS, for all or some of its employees, that employer's share of the system's unfunded retirement benefit liability was re-allocated to the remaining employers. Such withdrawals, under a cost-sharing multiple employer plan like PSERS, resulted in an increased funding obligation for the remaining employers. The withdrawal liability is designed to relieve the additional funding burden on the remaining employers.

Under the Public School Employees' Retirement Code, an employer is deemed to withdraw from PSERS when it ceases covered operations under the system or ceases to have an obligation to contribute under the system for all or any of the its employees but continues covered operations. Thus, an employer will be responsible for paying a withdrawal liability when, *for example*, it permanently closes all operations or creates an alternate retirement plan to cover some or all new employees. The calculation and payment of the withdrawal liability differs based on whether the employer is ceasing operations entirely or continuing participation in PSERS for some employees, but not all. For a complete withdrawal, a lump sum amount is due PSERS. For a partial withdrawal, the amount owed may be paid over time.

Below are some of the frequently asked questions regarding the withdrawal liability provision as applied to Charter School operations. If you are considering closing a school, creating an alternate retirement plan, or in any other way limiting PSERS membership for employees, you should contact the PSERS Employer Service Center for more information.

Frequently Asked Questions by Charter Schools RE: Withdrawal Liability

1. Was PSERS required to notify Charter Schools of I the enactment of the withdrawal liability provision?
   No. The withdrawal liability is a statutory provision enacted by the Legislature, not PSERS. Notice of the existence of the law is not required. Nor is notice required prior to imposing a withdrawal liability.

2. If a Charter School had adopted a plan in the past, prior to the effective date of Act 72, does the withdrawal liability provision apply?
   No. If an acceptable alternate retirement plan to PSERS was adopted ***prior*** to September 1, 2019, PSERS would not charge a withdrawal liability.

3. If a Charter School has a supplementary 403(b) that existed prior to the effective date of the Act 72, and is amended to serve as an alternate retirement plan in lieu of PSERS would the withdrawal liability apply?
   Yes. If a pre-existing plan is amended or a new plan is adopted after September 1, 2019 to act as an alternate retirement plan to PSERS, the withdrawal liability would apply.

4. If a Charter School is newly formed and is providing an alternate plan from the onset, would it be subject to the withdrawal liability provision?
   No. A "nonparticipating employer" is defined in the Retirement Code as an employer that has ceased "covered operations under [PSERS]" or that has ceased "to have an obligation to contribute under [PSERS] for all or any of the employer's school employees but continues covered operations." If a Charter School never participated in PSERS, then it cannot cease

covered operations or stop contributing to PSERS for employees. The withdrawal liability provision was intended to capture an employer's unfunded liability obligation after withdrawing from PSERS.

5. If current employees are still in PSERS and only new employees are moved to an alternate plan, is it a full withdrawal or partial withdrawal under the Code language?
If the school is not closing and still has PSERS members, it is likely a partial withdrawal, but PSERS must evaluate the unique facts of each situation to make a determination.

6. If a Charter School created an alternate plan after the effective date of the law, but now wants to rescind/terminate the plan in favor of covering all employees in PSERS, is PSERS able to provide guidance how this would work?
No. PSERS is unable to assist alternate plans in the actual termination of their alternate retirement plan. If the plan is closed to new hires, then new hires who qualify for PSERS will default into PSERS. If the plan is terminated, then those employees who had been covered in the alternate plan would need to be enrolled into PSERS if qualified. If the plan is rescinded and the employees do not receive a distribution of the employer's contributions or interest, then the employee may be eligible to enroll in PSERS retroactively.

7. How is PSERS notified of employees who should now be enrolled but were previously a part of the alternate retirement plan that is now terminated?
Once a plan is terminated, new employees are eligible for PSERS membership prospectively. The Charter School would need to enroll those employees with PSERS through the normal enrollment and reporting process. The PSERS Employer Service Center can assist with any reporting issues.

8. Is there a place that charters can go to request the amount of the withdrawal liability prior to adopting an alternate retirement plan?
Not at this time. PSERS staff is working on finalizing the implementation of the provision, including a process for estimate requests. It is anticipated that this will be forthcoming in the near future.

9. The withdrawal liability cost was more than was anticipated. How do I get more information about the calculation??
Any questions that a Charter School has regarding the amount or calculation of their withdrawal liability should be directed to the contact on PSERS' withdrawal liability determination.