SEYFARTH SHAW

MANAGEMENT ALERT

April 8, 2003

Illinois Public Employers May Have To Pay For the Health Insurance of Line-of-Duty Pensioners

On March 20, 2003, the Illinois Supreme Court issued its long-awaited decision in *Krohe v. City of Bloomington*, Case No. 94112 (March 20, 2003), in which the Court interpreted the term "catastrophic injury" as used in the Public Safety Employee Benefits Act ("PSEBA"). The Supreme Court interpreted the term "catastrophic injury" to mean *any* injury that qualifies an individual for a line-of-duty disability pension. Since then, the City of Bloomington has filed a petition for rehearing with the Supreme Court. Assuming that the Court does not reverse itself, its decision will have serious financial ramifications for all Illinois public employers who employ full-time public safety officers such as firefighters, police and correctional officers.

The PSEBA's Provisions

Enacted by the General Assembly in November 1997 over Governor Edgar's veto, the PSEBA provides free health insurance to a public safety officer who is "catastrophically injured" or killed in the line of duty while engaging in "fresh pursuit," investigating a criminal act, or responding to what is reasonably believed to be an emergency or an unlawful act perpetrated by another. The officer's spouse and children (until they reach the age of majority) are also entitled to free health insurance coverage under the Act. The health insurance must be provided by the employer for the remainder of the lives of the officer and spouse (or until the spouse remarries).

The PSEBA only requires the provision of a "basic" health insurance plan for an employee. "Supplemental" benefits need not be provided. Further, these benefits are offset by benefits payable from another source. However, the PSEBA does not define these terms. Moreover, the benefits are limited to injuries and deaths occurring after November 14, 1997.

Supreme Court's Rationale

Before the Supreme Court's decision, Illinois courts had been split on how to properly interpret the term "catastrophic." The First District Appellate Court, with jurisdiction over public employers in Cook County, had interpreted the term "catastrophic injury" as one that is "financially ruinous," thereby eliminating certain less-than-life threatening conditions such as a bad knee or back. See *Villarreal v. Village of Schaumburg*, 325 Ill. App. 3d 1157 (1st Dist. 2001).[1] On the other hand, the Fourth District Appellate Court, with jurisdiction over public employers in the central part of Illinois, had relied on a comment in the legislative history by Senator Donahue to conclude that "catastrophic" is equivalent to an injury qualifying one for a line-of-duty disability pension. The Supreme Court agreed with this interpretation.

The Court rejected the City's contention that the term "catastrophic" was unambiguous. Rather, the Court pointed out that the various parties and *amicus curiae* had raised at least six different interpretations of the term "catastrophic," thereby justifying the use of legislative history to help interpret the term. The Court found persuasive Senator Donahue's comment during a legislative veto-override session, in conjunction with several earlier legislative comments that indicated that a "catastrophic injury" equates with a "line-of-duty disability."

Recommendations for Illinois Public Employers

Now, under the Supreme Court's ruling, a full-time public safety officer who receives a line-of-duty disability pension will generally be entitled to free health insurance for the officer, spouse and children, as long as the officer was investigating a criminal act, responding to "fresh pursuit" or what was reasonably thought to be an emergency or an unlawful act perpetrated by another.

In light of the Supreme Court's interpretation, Illinois public employers will potentially face hundreds of thousands of additional dollars in health insurance costs every time a full-time public safety officer receives a line-of-duty disability pension. As a result, it would be advisable for Illinois public employers to consider the following issues when confronted with a request for free health insurance pursuant to the PSEBA.

If a public safety employee suffers a potentially career-ending injury *after* the *Krohe* decision (*i.e.*, March 2003):

- conduct a fact-intensive investigation, either independently or in conjunction with a workers' compensation carrier, to determine if the injury truly is "in the line-of-duty," and whether the injury occurred while responding to "fresh pursuit," an "emergency" or during the investigation or perpetration of a criminal act;
- PSEBA benefits would more than likely be considered a "property interest," thereby requiring due process for the employee before their denial; as a result, before denying PSEBA benefits, give the public safety officer notice and an opportunity to explain why the employee meets the Act's requirements and why the employee should be entitled to free health insurance under the Act;

- if the facts suggest that the injury was not sustained in the line-of-duty, in the course of the required response, or the officer is not truly disabled, consider formally intervening in any subsequent pension board proceeding as a way to challenge the granting of a line-of-duty disability pension;
- thereafter, contemplate requesting the pension board to periodically review the officer's disability status;
- consider from a policy perspective the ability to permanently accommodate some limited work-related restrictions.

If an employee approaches a public employer with a request for free health insurance arising from an injury that occurred *before* the *Krohe* decision, public employers should consider the following additional factors before granting the request:

- remember that death and injury precipitating the pension must have occurred prior to November 14, 1997 in order to entitle the officer to benefits; as a result, conduct an investigation to determine whether the disabling injury may have occurred before November 1997 (the effective date of the PSEBA), or whether a subsequent injury merely aggravated a pre-existing disabling condition; if so, there may be grounds to deny the PSEBA claim on this basis;
- depending on where the public employer is geographically located, there may be an argument that the employer does not owe any retroactive health insurance payments to the employee. For example, from October 2001 through March 2003, public employers in Cook County were governed by the First District Appellate Court's decision in *Villarreal v. Village of Schaumburg*, 325 Ill. App. 3d 1157 (1st Dist. 2001), which found that only an officer whose "catastrophic injury" was "financially ruinous" was entitled to the Act benefits;
- conduct an investigation, including the review of past records, to determine whether the injury causing the disability was incurred in fresh pursuit or while responding to an emergency or unlawful act;
- consider whether an officer previously made a request for PSEBA benefits; if not, the employer may not owe any retroactive benefits;
- although under state law the officer likely has the right to maintain the health insurance plan of his choice, if your municipality offers both a basic and premium health insurance plan, consider that the Act provides for employer payment of the basic (not supplemental) group health insurance plan benefits (unfortunately, the Act does not define it);
- because health insurance benefits payable under the Act are reduced by benefits payable from another source, consider whether your health plan's coordination of benefits provisions are appropriate and during the fact-finding, determine whether the officer has health insurance benefits available through another source (*e.g.*, new employer) and the extent of those benefits;
- if you have doubts, consider requesting the pension board to determine whether the officer is still disabled.

Keep in mind that the entire issue of retroactivity, as well as the proper interpretation of PSEBA terms such as "emergency" and "fresh pursuit," have not yet been addressed by the Illinois courts. As a result, there are now more questions than answers facing Illinois public employers. Because there is likely more litigation to come, public employers should check with legal counsel when confronted with a PSEBA claim by an injured employee in order to determine whether the claim is indeed valid, and if it is, the extent of the public employer's obligations to the employee.

If you have further questions about an employer's obligations under the PSEBA, please contact a Seyfarth attorney. In particular, Ted Clark, Bob Long, Jill Leka and Jim Powers are familiar with PSEBA issues from their defense of the *Villarreal* case.

Endnote

1 Ironically, the First District recently overruled the Villarreal decision in *O'Loughlin v. Village of River Forest*, Case No. 1-02-0404 (1st Dist. March 28, 2003). Without citing to *Krohe*, the First District reevaluated the term "catastrophic" and concluded that it was ambiguous, and, as a result, the Court relied on legislative history to help interpret the term.

ATLANTA
One Peachtree Pointe
1545 Peachtree Street , N.E., Suite 700
Atlanta, Georgia 30309-2401
404-885-1500
404-892-7056 fax

BOSTON
Two Seaport Lane, Suite 300
Boston, Massachusetts 02210-2028
617-946-4800
617-946-4801 fax

CHICAGO
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803
312-346-8000
312-269-8869 fax

HOUSTON
700 Louisiana Street, Suite 3850
Houston, Texas 77002-2731
713-225-2300
713-225-2340 fax

LOS ANGELES
One Century Plaza
2029 Century Park East, Suite 3300
Los Angeles, California 90067-3063
310-277-7200
310-201-5219 fax

NEW YORK
1270 Avenue of the Americas, Suite 2500
New York, New York 10020-1801
212-218-5500
212-218-5526 fax

SACRAMENTO
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
916-448-0159
916-558-4839 fax

SAN FRANCISCO
101 California Street, Suite 2900
San Francisco, California 94111-5858
415-397-2823
415-397-8549 fax

WASHINGTON, D.C.
815 Connecticut Avenue, N.W, Suite 500
Washington, D.C. 20006-4004
202-463-2400
202-828-5393 fax

BRUSSELS
Boulevard du Souverain 280
1160 Brussels, Belgium
(32)(2)647.60.25
(32)(2)640.70.71 fax