

Management Alert



Illinois Trial Court Holds That Village Does Not Have to Pay Attorneys' Fees to Firefighter's Attorney for Claim Under the Public Safety Employee Benefits Act

The Village of Oak Brook recently obtained a significant victory in the growing body of litigation brought by public safety employees for substantial disability benefits. Under the Public Safety Employee Benefits Act (PSEBA), public safety employees, including firefighters and police, are eligible to receive health coverage for themselves, their spouses and dependent children, with the costs fully paid by the employer. The paid health coverage is available to those employees that are "catastrophically injured" or killed in the line of duty during certain "emergency response" activities in the line of duty.

Background

A 2003 decision by the Illinois Supreme Court dramatically changed the landscape for employers of public safety personnel by holding that a "catastrophic" injury under the PSEBA would be established simply by virtue of a firefighter or police officer receiving a "line-of-duty" disability pension, regardless of how severe that injury was or whether the employee was able to perform other meaningful work. As the Pension Board, and not the employer, awards a line-of-duty disability pension, employers were faced with an increased number of claims under the PSEBA for free health coverage based on determinations by the Pension Boards. No appropriation was made by the Illinois legislature for revenue to fund the costs of the health coverage benefits for a disabled employee and employers have had to absorb the significant costs of such coverage.

Litigation regarding PSEBA claims has been significantly on the rise since the 2003 Supreme Court decision. Attorneys for the employees have banked on being paid for their efforts by also suing the employers for their fees, based on a claim under the Attorney Fees in Wage Actions Act (AFWAA). The AFWAA provides for employers to pay an employee's attorneys' fees if the employee prevailed on a claim for wages.

To date, there appears to be no reported decision in any Illinois court that has explicitly denied attorneys' fees under a PSEBA claim. Although a couple of prior cases indicated that attorneys' fees *may* not be available for PSEBA claims, the issue was not explicitly before those Courts at the time.

Richter v. Village of Oak Brook

However, in January, 2013, the issue was squarely before the Court in *Richter v. Village of Oak Brook*. Judge Terence Sheen requested the parties file briefs analyzing the legal considerations regarding the availability of attorneys' fees for PSEBA claims when the Village contested that it would be liable for attorneys' fees for a PSEBA claim. After considering the briefs, Judge Sheen agreed with the Village's arguments and ruled that employees are not entitled to recover attorneys' fees from

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the employer under the AFWAA for a PSEBA claim. Judge Sheen agreed that PSEBA benefits for health coverage are not claims for “wages” under the AFWAA and the Village would not be liable for the firefighter’s attorneys’ fees. *Patti Mehler* of Seyfarth Shaw represented the Village in this case.

The *Richter* ruling may be appealed and, if so, hopefully the appellate court will agree with the trial court’s sound reasoning. Regardless of an appeal, this decision can be used by other public employers to convince other courts that employees bringing PSEBA claims are not entitled to attorneys’ fees.

If you would like further information, please contact your Seyfarth attorney or Patti Mehler at pmehler@seyfarth.com.



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