



LOUISIANA SCHOOL EMPLOYEES'
RETIREMENT SYSTEM

Date: July 24, 2017

To: Superintendents of All Schools Covered by LSERS

From: Charles P. Bujol, Executive Director

Subject: Personnel Actions Causing Liability for UAL – Questions and Answers

As a new school year approaches, this is a good time to make sure everyone is aware that a school system's employment decisions can affect the contributions your system must make to LSERS.

One reason why LSERS can pay retirement benefits is because of the employer contributions associated with each school system position covered by LSERS. In 2008, the legislature enacted La. R.S. 11:1195.2. That law provides that if your school system eliminates an LSERS position through privatizing, outsourcing, contracting the service with a private employer, or any other means, then your system must pay the Unfunded Accrued Liability (UAL) attributable to the position your system eliminated. When a school system incurs this statutory obligation, then the system has the option of paying the UAL owed in either a lump sum, or equal monthly installments with interest at the actuarial rate.¹

From time to time, school systems ask us how LSERS applies this provision of law to a specific set of facts. LSERS believed it would be useful, as general guidance, to provide the following representative questions, and our answers. Of course, the questions that follow do not present every possible scenario that might arise. Also, LSERS does not present the answers to the questions in the examples as legal advice. On any question in this subject area, we encourage each system to consult its own legal counsel, and contact LSERS for an actuarial cost estimate, before making any final personnel decision that could have UAL implications.

Question 1: If a school system closes an older school and eliminates some LSERS positions at that school, then later opens a new school that uses private contract workers, and that results in fewer persons contributing to LSERS, does that create an obligation of the system to pay UAL under La. R.S. 11:1195.2?
Answer: Yes. The elimination of the positions at the old school does create an obligation of the system to pay the UAL associated with the LSERS positions that the system chose to replace with contract workers.

¹ La. R.S. 11:1195.2 B.

Question 2: If a system consolidates students at multiple schools into a new school that uses private employees, and the system eliminates LSERS employees at the now smaller schools which results in fewer positions contributing to LSERS, does that cause a legal obligation of the system to pay UAL?

Answer: Yes. This decision by the school system does create an obligation to pay the UAL associated with the LSERS positions that the system eliminated and replaced with private employees.

Question 3: What if a system eliminates two school custodian positions that are LSERS members, and at about the same time chooses to engage a private contractor to provide the services of two maintenance workers, does that create a UAL obligation for the system?

Answer: Yes. Those decisions by the school system do create an obligation to pay the UAL associated with the LSERS custodian positions that were eliminated. State law does not require that the two new contract workers must perform the same exact tasks as were performed by the eliminated positions, it only requires the elimination of a public position.

Question 4: What if a system eliminates a LSERS position in one fiscal year, but does not engage a contractor to provide the services of another worker until the next fiscal year, does that create an obligation to pay UAL?

Answer: Yes. The elimination of an LSERS position and the engagement of a private contractor to supply the services of an LSERS position do not need to have occurred in the same fiscal year to trigger an obligation by the system to pay the UAL of the eliminated position. Therefore, in the instance posed by this question, if the system eliminated the position in the fiscal year before the system engaged the contractor, the system would still have an obligation to pay the UAL for the eliminated position.

Question 5: If a system has never eliminated an LSERS position, but decides to contract with an outside janitorial service to provide cleaning services at a new school, does that create an obligation of the system to pay UAL?

Answer: No. The state law requires that an LSERS position is eliminated to trigger a UAL obligation. If the system never eliminated an LSERS position, then the contracting for cleaning services at a new school would not create a UAL obligation.

Question 6: Assume that a system has not eliminated any LSERS positions, but does decide to also contract with an outside janitorial firm for cleaning services for one full-time contract worker. Then, the next fiscal year, budget problems lead the system to eliminate one LSERS position. Does that create a UAL obligation for the school system?

Answer: Yes. In analyzing this question, LSERS examines the fiscal years before the event that gave rise to the issue. In the instance posed by this question, the system engaged the contractor during a fiscal year before the system eliminated the LSERS position. Therefore, in this situation the system would have an obligation to pay the UAL for the eliminated position.

Question 7: Assume that a system has not eliminated any LSERS positions, but also contracts with an outside janitorial firm for cleaning services of one full-time contract worker. Then, the next fiscal year, the system chooses to eliminate one LSERS position upon the retirement of one of its LSERS employees. Does that create a UAL obligation for the school system?

Answer: Yes. As noted in the answer to the preceding question, in such situations, LSERS examines the fiscal years preceding the event that gave rise to the issue. In the instance posed by this question, the system engaged the contractor during a fiscal year before the system eliminated the LSERS position through attrition in the form of retirement. Therefore, in this situation the system would have an obligation to pay the UAL for the eliminated position.

Question 8: Assume that a system has not eliminated any LSERS positions, but does decide to also contract with an outside custodial firm for cleaning services of one full-time contract worker. Then, the next fiscal year, budget problems place the system in a position of eliminating either one LSERS position or the one contract cleaning worker. If the system chooses to eliminate the contract cleaning worker and not eliminate the LSERS position, does that decision avoid creating a UAL obligation?

Answer: Yes. As previously noted, if the system eliminates no LSERS position, then the system incurs no UAL obligation.

As these questions show, UAL obligation issues may arise from many sets of circumstances. While we have tried here to cover examples of questions that can arise in this area, such a sampling can never cover every possible instance that presents such a question. New situations will always arise, and LSERS addresses them as they emerge.

As we cautioned at the outset, we do not present the information here as legal advice. On any question in this subject area, we encourage each system to consult its own legal counsel, and contact LSERS for an actuarial cost estimate, before making any final decision that could give rise to a UAL obligation issue.