

Ordinance Amendments for Clarifying Application Process and Active Service Requirements

November 10, 2023

BACKGROUND

- The Employees' Retirement System of the County of Milwaukee ("ERS") is a tax-qualified retirement plan under the Internal Revenue Code ("Code"). In order to maintain its tax-qualified status, ERS must comply with Code requirements applicable to governmental plans, including being administered in accordance with the Plan document, which consists of Milwaukee County Ordinance section 201.24 and Appendix B.
- Retirement Plan Services ("RPS") is the County department that administers ERS on a day-to-day basis with oversight by the Pension Board.
- RPS has identified a number of Ordinance provisions and procedures that would benefit from simplification and clarification. Such changes are meant to better explain the benefit requirements for ERS members and RPS, which leads to better administration and fewer errors.
- Additionally, the Wisconsin legislature previously passed laws relating to accidental disability benefits provided by certain retirement systems, including Milwaukee County. These laws have been incorporated into RPS' administration, but the Ordinances would benefit from an update to expressly include these laws into the Plan.
- Based on this, RPS is asking the County Board to consider Ordinance amendments aimed at clarifying the benefit application requirements, providing a clear definition of active service, incorporating State law and streamlining some of the survivor benefit provisions.
- The following provides an overview of the substantive changes included in the draft amendments.

ORDINANCE AMENDMENTS

- Amendments to Ordinance section 201.24(2.19). Ordinance section 201.24(2.19) includes a definition of retirement.
 - *Subsection (1)*. Subsection (1) has been revised to clarify that the term "retirement" means not only termination of employment but the submission of a completed retirement application to RPS.
 - RPS cannot calculate or commence a member's pension benefit until it has received a completed retirement application. Additionally, some benefit options are only available to members who retire directly from active service.

- The express inclusion of a retirement application requirement will help clarify when members retire directly from active service and when they are only eligible for deferred vested benefits.
 - *Subsection (2)*. Subsection (2) of the Ordinance provides that all pension benefits will commence on the first day of a month. The draft amendments clarify that this date will be the first day of the month following the month that the member fulfills all requirements to retire, including termination of employment and submission of a retirement application.
- New Ordinance section 201.24(2.24). As noted above, there are a number of benefit options that are only available to members who retire from active service (e.g., a backDROP). This draft Ordinance section clarifies the term “active service” and defines that term to mean current employment with Milwaukee County as an employee in an ERS-covered position.
- Amendments to Ordinance section 201.24(3.11). Ordinance section 201.24(3.11)(6) describes the circumstances under which an employee who has terminated County employment may request a refund of the employee’s accumulated contributions. Currently, the Ordinance requires that a member elect a refund within 180 days of termination of employment. If a member does not request a refund within 180 days, the member loses their ability to receive a refund of their contributions, which may result in nonvested members receiving no benefit from ERS.
 - The only exception to the 180-day refund deadline is if the member does not receive notice of their right to request a refund. As a result, the Pension Board hears many appeals each year from members requesting a refund of their employee contributions after the 180-day deadline. However, because the 180-day deadline is in the Ordinances, the Pension Board is required to deny many of these appeals.
 - The Pension Board is requesting that the County Board consider extending the employee contribution refund deadline to 5 years after termination of employment, which aligns the refund deadline to the time a nonvested member’s service credit remains valid in ERS.
 - The Pension Board is cognizant of the fiscal impact of this change, so to reduce the fiscal impact and to encourage nonvested members to timely request refunds, the Pension Board requests the County Board to further consider adding a deadline to the accrual of interest on such contributions.
- Amendments to Ordinance section 201.24(3.5). Ordinance section 201.24(3.5) provides for refunds of member contributions upon termination or death.
 - *Paragraph 1*. The draft amendments to Paragraph 1 clarify that this paragraph applies to beneficiaries as well as members. Beneficiaries are only eligible for a refund of employee contributions if the beneficiaries are not eligible for a pension benefit in another Ordinance section.

- *Paragraph 3.* The draft amendments to Paragraph 3 remove information related to refunds of a member's savings account. There are no current employees who have savings accounts. Accordingly, the provisions related to refunds are no longer necessary.
- Amendments to Ordinance section 201.24(4.1). Ordinance section 201.24(4.1) determines normal pension eligibility for ERS members who retire directly from active service. Currently, it is unclear from the Ordinances when a member is considered to be retiring from active service and when the member becomes a deferred vested member.
 - *Subsection 1(a).* The draft amendments to Subsection 1(a) clarify that to be eligible for a normal pension, a member must satisfy the age and service requirements as well as submit a completed retirement application to RPS before termination of employment.
 - Previously, there have been questions about when a member becomes a deferred vested member. For example, is a member a deferred vested member if the member terminates employment and applies for retirement the next day or a week later or a month later? The draft amendments provide that a member is a deferred vested member if they terminate employment before applying for retirement.
 - RPS does have an emergency retirement process under which a member may quickly apply for retirement if they are terminating employment sooner than anticipated. However, the draft Ordinances also include a 1-day grace period for a member to submit their application to RPS. Therefore, if a member submits their application within 1 calendar day of termination, RPS will treat the application as if it was received on the date of termination. This would allow employees who leave service or are terminated by the County at the end of a work day to still receive a normal retirement benefit as well as a backdrop and Rule of 75, if applicable.
 - The draft amendments to this Subsection also clarify that a member who is employed by the County but not in an ERS-covered position may still be eligible for a normal pension under this section.
 - *Subsection 2.* The draft amendments to Subsection 2 clarify that only members who are in active service at the time of retirement are eligible for the Rule of 75.
 - This amendment carves out the employees who are employed by the County in positions that are not covered by ERS.
 - Those employees are not eligible to retire under the Rule of 75, but they may retire with a normal pension under Subsection 1(a) if they meet the requirements in Subsection 1.

- Amendments to Ordinance section 201.24(4.2). Ordinance section 201.24(4.2) provides the requirements for an early normal pension.
 - The draft amendments clarify that a member who is applying for early retirement must also submit a retirement application on or before termination of employment. The draft amendments further include the 1-day application grace period that will allow RPS to treat the application as if it was received on the date of termination.
 - The draft amendments also clarify that an employee employed by the County in a non-ERS position may retire under Ordinance section 201.24(4.2).
- Amendments to Ordinance section 201.24(4.3). This Ordinance section describes eligibility for an accidental disability retirement benefit (“ADR”).
 - *Subsection (2)*. Wisconsin Statute section 59.88¹ provides that a county having a population of 500,000 or more may only offer a duty disability pension benefit for mental injuries if the requirements described below are met.
 - This Statute applies to ERS because Milwaukee County is a county with a population of 500,000 or more. The only duty disability benefit offered by ERS is the ADR.
 - Under Wisconsin Statute section 59.88, the Pension Board may only grant an ADR based on a mental injury if:
 - The mental injury results from an occurrence that is of greater dimension than the day-to-day mental stresses and tensions and post-traumatic stress that all similarly situated employees must experience as part of the employment; and
 - The employer certifies that the mental injury is a duty-related injury.
 - The draft amendments in Subsection 2 of the Ordinance revises the ADR standards to include these additional requirements for ADR applications based on mental injuries.
 - *Subsection (3)*. Wisconsin Statute sections 891.45 through 891.455 include presumptions for certain impairments and diseases (as described below) as they relate to disability benefits for fire fighters, correctional officers, emergency medical service providers and law enforcement officers. Similar to the Statute related to mental injuries, these presumptions apply to ADRs paid by ERS.

¹ The Statute provides that if a retirement system determines that an applicant is not eligible for an accidental disability benefit based on a mental injury, the applicant may appeal the determination to the Department of Workforce Development. This alternative appeal process will be addressed in a Pension Board Rule amendment related to disability appeals.

- This subsection (3) describes the three presumptions provided for under Wisconsin law for certain impairments and diseases.
 - *Heart or Respiratory Impairment or Disease.* Under subsection (a), a firefighter is entitled to a presumption that the member's heart or respiratory impairment or disease was caused by the firefighter's employment if the firefighter meets the requirements described in the proposed amendments.
 - *Infectious Diseases.* Under subsection (b), for certain infectious diseases, a correctional officer, emergency medical service provider, fire fighter or law enforcement officer is entitled to a presumption that the disease was caused by the member's employment if the member satisfies the requirements in the proposed amendments.
 - *Cancer.* Under subsection (c), for the cancers listed in the proposed amendments, a firefighter is entitled to a presumption that the member's cancer was caused by the member's employment if the requirements in the proposed amendments are met.
 - *Qualifying Medical Examination.* To meet the requirements for any of the presumptions described above, the member must show that a qualifying medical examination given prior to the member's employment showed no evidence of the impairment, disease or cancer.
 - Sometimes members may not have a copy of an actual examination provided many years prior to their ADR application.
 - Therefore, the proposed amendments provide alternative ways for a member to satisfy the requirement of a qualifying medical examination. These alternatives are the same used by the State for purposes of administering these presumptions in WRS.
- Despite these presumptions, an applicant would still need to satisfy the requirements in Ordinance section 201.24(4.3), including that the member's employment was terminated due to total and permanent incapacity for any duty as the natural and proximate result of an accident occurring at some definite time and place while in the performance of duty. The presumptions described above could potentially provide the member with a finding that the member's disability (if caused by one of these diseases) occurred as part of the member's employment. However, the member would still need to satisfy the rest of the requirements, including that the disability occurred as a result of a specific occurrence.

- Amendments to Ordinance section 201.24(4.5). Ordinance section 201.24(4.5) provides pension benefits for deferred vested members who terminate County employment prior to retirement.
 - *Subsection (1)*. The draft amendments to Subsection (1) reflect the draft amendments to Ordinance section 201.24(4.1) and clarify that a member is eligible for a deferred vested pension if the member’s employment terminates prior to fulfilling all of the requirements of a normal pension, including the submission of a retirement application.
 - *Subsection (4)*. The draft amendments to Subsection (4) clarify that a sworn law enforcement officer who terminates employment prior to retirement eligibility may apply for a deferred vested pension benefit at age 57 regardless of the member’s years of service, or age 55, if the member earned at least 15 years of service at the time of termination. This is consistent with RPS’ past practice.
 - The draft amendments to Subsection (4) further remove the requirement that the Pension Board authorize a deferred vested member’s early retirement. Instead, under the draft amendments, RPS may approve a member’s early retirement request upon receipt of an application for a member who meets the standards in the Ordinance.
 - The commencement of an early deferred vested benefit does not involve discretion or interpretation of the Ordinances and Rules. Accordingly, it is not necessary for the Pension Board to review such requests.
- Amendments to Ordinance section 201.24(4.6). Ordinance section 201.24(4.6) provides details regarding distribution requirements.
 - *Subsection (1)*. The amendments to Subsection (1) make clear that in order for a member or beneficiary to receive a benefit from ERS, the individual must first submit an application to RPS, and no benefit is payable until such application is received. The amendments also clarify that ERS does not pay retroactive benefits.
 - The third paragraph of Subsection (1) includes new proposed language that provides an expiration date for a retirement application.
 - Under the draft amendments, a member’s retirement application will only be valid for 180 days after submission.
 - This deadline provides clarity to RPS and avoids confusion if a member submits an application but does not retire by the intended retirement date (*e.g.*, remains in active employment).
 - If a member remains in active employment beyond the 180-day period, they will need to submit a new retirement application when they again want to retire.

- *Subsection (2)*. The amendments to Subsection (2) postpone a member's required start date to the latest day allowed by the Code.
 - The IRS requires tax-qualified retirement plans to commence benefits no later than a member's required start date. Previously, this date was the April 1 after the member attained age 70-1/2 (or the date the member retired, if later). The Secure Act, adopted in 2019, changed this date to the April 1 after the member attains age 72. This date was subsequently updated further by Secure Act 2.0 to age 73 (effective January 1, 2023) and then age 75 effective January 1, 2033.
 - ERS would like to update the Ordinances and Rules to give members additional time to commence their benefits and not require any member to commence benefits earlier than required by the Code. Under these changes, as the Code is revised to postpone the required start date, ERS' start date will automatically increase.
- Amendments to Ordinance section 201.24(5.16). This Ordinance section provides for the backDROP form of benefit.
 - *Subsection (1)*. The draft amendments to Subsection (1) clarify that a backDROP is only available to members who are in active service and eligible for a normal retirement benefit. Thus, deferred vested members are not eligible for a backDROP.
 - RPS' past practice, in accordance with the Pension Board's prior interpretation of the Ordinance, is to limit backDROP eligibility to member's who are ERS-eligible County employees at the time of retirement.
 - The draft amendments clarify these requirements.
 - *Subsection (1)(k)*. The draft amendments propose adding a new Subsection (1)(k) to the Ordinance.
 - This subsection clarifies that an individual who is employed by the County in a non-ERS covered position is not eligible to receive a backDROP.
- Amendments to Ordinance section 201.24(6.1). This Ordinance section provides a death benefit for a beneficiary of a deputy sheriff who dies in the performance of duty.
 - *Introductory Paragraph*. The draft amendments provide for a death benefit under this section if a deputy sheriff meets the requirements of Ordinance section 201.24(4.3)(3)(b) and dies in active service as a result of the disease the deputy sheriff is presumed to have contracted through the deputy sheriff's employment.
 - *Subsections (a) and (b)*. The draft amendments to Subsections (a) and (b) remove the requirement that the surviving spouse benefit terminate if the spouse remarries.

- It is administratively burdensome for RPS to track a surviving spouse’s marital status, and even with careful tracking, it is likely RPS may not know of a marriage for a number of months or years.
 - If ERS continues to pay a benefit to a remarried spouse under the current language, it is an overpayment error that needs to be corrected. Accordingly, to retain this requirement increases the likelihood of errors without a significant benefit to ERS.
 - *New Addition.* The amendments also propose the addition of a new sentence at the end of Ordinance section 201.24(6.1).
 - This sentence clarifies that if a benefit is payable under this Ordinance section, no Protective Survivorship Option (“PSO”) is payable under Ordinance section 201.24(7.1)(3).
 - If a deputy sheriff has satisfied the requirements to retire and continues to work in County employment, the deputy sheriff may be eligible to elect a PSO. If that deputy sheriff then dies in the performance of duty before retiring, ERS could potentially be paying two survivor benefits, one under Ordinance section 201.24(6.4) and the PSO benefit.
 - RPS advised that the Ordinance section 201.24(6.1) benefit is generally, although not always, higher. Accordingly, the draft amendments provide that the Ordinance section 201.24(6.1) benefit will be paid instead of the PSO if a deputy sheriff’s beneficiary is eligible for both benefits.
- Amendments to Ordinance section 201.24(6.3). This Ordinance provides for a lump sum death benefit if no pension benefit is payable for the death of a member in active service.
 - The draft amendments clarify that this benefit is only payable for the death of a member in active service. Accordingly, if an individual dies after termination of ERS-covered employment and before retirement, their beneficiaries will not receive any death benefit.
 - If a member terminates ERS-covered employment but remains employed with the County at the time of death, their beneficiaries will not be eligible for this lump sum death benefit, but they will be eligible for a refund of the member’s employee contributions.
- Amendments to Ordinance section 201.24(6.4). This Ordinance section provides a survivor annuity for members who die in active service prior to retirement after completing a year of ERS service.
 - There are two survivor annuities payable under this section. The first is a pension benefit payable to a dependent spouse, which is a spouse over the age of 60 or under 60 with children eligible for a survivor benefit. The second part of the survivor

benefit is the benefit payable to a minor child under the age of 18 or 22 if the child is a full-time student.

- *Paragraph 1.* The amendments to the first paragraph of the Ordinance clarify that a survivor pension will not commence until RPS receives a completed application from the beneficiary.
- *Paragraph 2.* The draft amendments in the second paragraph propose to change the cutoff dates for survivor pensions payable to a child and a surviving spouse.
 - As noted above, currently, a child’s survivor benefit will cease upon reaching age 18, marrying, or age 22 if the child is not married and a full-time student.
 - It is administratively burdensome for RPS to confirm whether a child is married or a full-time student from age 18 until 22. Often, individuals will not confirm these details with RPS, even when asked multiple times. RPS is then forced to cut off the benefit or risk an error, both of which are time consuming.
 - Instead, RPS would prefer to have a child eligible for a benefit until age 22, regardless of whether the child is married or a full-time student.
 - The County Board could consider ceasing the benefit at age 18 instead of age 22, but it is possible that current members may object to that change as a cutback to a vested benefit.
 - ERS would have strong arguments in favor of the County’s ability to change the benefit for new beneficiaries, but the litigation costs may outweigh the small increase to benefits.
 - The Ordinance currently requires RPS to cease a survivor benefit if the surviving spouse remarries. As noted above, it is administratively burdensome for RPS to monitor the marital status of surviving spouses and these requirements are likely to result in errors. Accordingly, the draft amendments remove this requirement.
- *Paragraph 4.*
 - The draft amendments to the fourth paragraph clarify that a beneficiary who was receiving a benefit as a dependent spouse under the age of 60 must reapply to commence a dependent spouse benefit when they attain age 60.
 - Often a surviving spouse will initially qualify as a dependent spouse because the individual is under age 60 and has a child who is eligible for a survivor pension. However, once the child reaches age 18 or 22, depending on student status or marriage, the dependent spouse is no longer eligible for the benefit. Once the spouse attains age 60, the

spouse again becomes a dependent spouse and resumes eligibility for the benefit.

- Currently, the Ordinance requires RPS to recommence the pension benefit as soon as the spouse attains age 60. This is administratively challenging for RPS, especially if it requires additional information from the dependent spouse, and leads to errors if RPS does not start the benefit on time.
- RPS would prefer to require the spouse to reapply for the benefit and avoid an error if the benefit is not automatically restarted at age 60. This requirement will also encourage spouses to respond to RPS' requests for information. RPS will send reminder letters to eligible spouses when they are approaching age 60 to encourage them to timely apply for the benefit to recommence.
- The Ordinance provides that for a dependent spouse who has attained age 60, the survivor benefit payable is 50% of the normal pension that would have been payable to the member if the member had continued in County employment until the member was eligible for retirement.
 - The Ordinance is clear that the member's normal pension should be calculated using the service the member would have earned if the member continued in County employment until retirement. The Ordinance also directs RPS to determine the member's final average salary as of the date of the member's death.
 - The Ordinance does not currently specify what multiplier RPS should use to calculate the member's pension benefit.
 - If there are many years between the member's death and the dependent spouse attaining age 60, the applicable multiplier may have changed.
 - The draft amendments to the fourth paragraph of the Ordinance clarify that the multiplier to be used in calculating the member's retirement pension is the multiplier in effect at the time the survivor benefit is calculated.
- *Paragraph 5.* The draft amendments to the fifth paragraph clarify that the survivor benefit payable to a child will not be paid until the child (or a guardian on behalf of the child) applies for the benefit with RPS.
 - The draft amendments further clarify that if a child attains age 22 before applying for a benefit, the only benefit payable to the child is a lump sum benefit of \$2,000 as provided in Ordinance section 201.24(6.3) and the survivor pension will not be paid.

- *Paragraph 6.* The draft amendments delete the final paragraph of Ordinance section 201.24(6.4) to remove the option for a member to designate a beneficiary to receive the membership account and \$2,000 lump sum payment instead of the survivor pension benefit.
 - All members currently designate a beneficiaries to receive a refund of the member's membership account upon death, and RPS does not provide members with the option to waive the Ordinance section 20.24(6.4) survivor annuity in lieu of the membership account refund. Accordingly, this language is unnecessary, and its removal from the Plan has no practical effect.
- Amendments to Ordinance section 201.24(7.1).
 - *Subsection (3).* Subsection 3 of this Ordinance allows a member who is eligible to retire but remains in County employment to elect a PSO benefit. This PSO benefit pays a 100% or 50% survivor benefit to a member's beneficiary if the member dies in active service.
 - The draft amendments clarify that a member must meet the age and service requirements for a normal pension to select this option.
 - The amendments further clarify that the member must die in active service and that the PSO option must be elected on a form approved by the Office of Corporation Counsel.
 - There have been questions in the past with regard to whether a member elected a PSO if the member completed a retirement application or other paperwork. These amendments make clear there is a PSO form that must be completed in order to elect this form of benefit.
 - The draft amendments also propose a new sentence at the end of Subsection (3) that mirrors the amendments to Ordinance section 201.24(6.1) and clarify that if a benefit is payable under Ordinance section 201.24(6.1), the PSO benefit is not payable.
 - *Subsection (4).* The draft amendments propose deleting Subsection (4). This subsection provides that RPS will track the amounts payable under Ordinance sections 201.24(6.1) and (6.4) and reduce any benefit payable under Ordinance section 201.24(7.1) accordingly.
 - It is administratively burdensome for RPS to track two different survivor pensions for one member and may lead to errors that need to be corrected.
 - As noted above, the proposed amendments eliminate the ability for a member's beneficiary to receive both a PSO and a survivor pension under Ordinance section 201.24(6.1). Additionally, the benefit payable under Ordinance section 201.24(6.4) is only payable if the member has not yet met

the age and service requirements for a normal pension benefit. Because a PSO benefit is only available to members who have met the age and service requirements for a normal pension benefit, there should not be a beneficiary who is eligible for both a PSO and a dependent spouse benefit.

- Based on the foregoing, it is unnecessary to retain Subsection (4).
- Amendments to Ordinance section 201.24(11.7). Ordinance section 201.24(11.7) includes ERS' anti-alienation provision, which prohibits the attachment, garnishment or other use of pension benefits to pay debts or claims of the member. This section includes certain exceptions to the anti-alienation rule such as compliance with a lien or levy from the IRS.
 - Retirees receiving annuity benefits from ERS often request to have a post-tax portion of their pension benefits withheld to pay premiums for retiree health insurance. This saves the retirees from having to send a separate payment for these premiums.
 - The draft amendments provide an additional exception to the anti-alienation provision for the payment of retiree health care premiums. The retiree will need to affirmatively elect for these payments to be made from their retirement benefits and may rescind the election at any time.