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August 16, 2010

TO: Certifying Officers of the Alternate Benefit Program (ABP)

FROM: Joseph Zisa, Manager 1, Fiscal Resources
Division of Pensions and Benefits

SUBJECT: ABP Contribution Limits under Chapter 31, P.L. 2010

Chapter 31, P.L 2010, signed into law by Governor Christie and effective July 1, 2010, limits employer contributions to the Alternate Benefit Program (ABP) for higher education employees whose salary exceeds statutory maximum salary of Executive Branch department heads.

Prior to this change, the employer contributed 8% of an ABP member's base salary and the member contributed 5% toward the retirement savings plan. Under the provisions of Chapter 31, the State will continue to contribute at a rate equal to 8% of the member's base salary ***except*** that the amount of the contribution **may not exceed** 8% of the maximum salary for State department officers as established by law. Currently, N.J.S.A. 52:14-15.107 sets the maximum annual salary of department officers at $141,000 per calendar year.

The provisions of Chapter 31 apply as of July 1, 2010. Please refer to the following questions and answers to help in implementing this change.

QUESTIONS AND ANSWERS
REGARDING CHAPTER 31, P.L. 2010

1. **Q:** Will salaries be looked at on a calendar year or fiscal year basis?

   A. A calendar year basis, in the same way that limitations have been applied under IRC 401(a)(17) / 404(l) Annual Compensation limit.

2. **Q:** Since calendar year salaries are being used, would salaries paid from January 1 through June 30 be included in determining when an employee reaches the $141,000 limit for state employer matching contributions?

   A: Yes, if an employee has reached the accumulated base salary limit under this law of $141,000 for calendar year 2010 prior to the July 1, 2010 — effective date of this measure — no additional employer contributions are to be made toward that employee's ABP retirement annuity after June 30, 2010 and no recovery of employer contributions for the excess is required. If the limit of $141,000 is reached on or after July 1, 2010, the employer is to cease making employer matching contributions under the ABP for compensation in excess of this limit. If an employer is unable to institute this change to become effective for or on payrolls after July 1, 2010, the employer is responsible for correction of any excess contribution through the appropriate investment provider's adjustment process.

3. **Q:** For State Centralized Payroll and most State Colleges and Universities there was a regular payroll scheduled for July 9, 2010. If an employee's compensation received from January 1, 2010, exceeded the $141,000 limit prior to the first payroll following enactment of this legislation, will the cap need to be imposed on the July 9 payroll?

   A: Yes, The employer's liability is established on the payroll date and becomes payable to the member's retirement annuity on that payroll date. Since the law's effective date is July 1, 2010, any payroll made after June 30, 2010, must not include employer matching contributions for any compensation in excess of the limit.

4. **Q:** Is the employee's 5% mandatory contribution not capped at $141,000 in salary but rather the higher limits allowed under IRC 401(a)(17) / IRC 404(l) Annual Compensation limit, which for 2009 and 2010 is $245,000, or the higher amounts permitted for grandfathered employees under Chapter 113, P.L. 1997?

   A: Yes, employee contributions will continue to be taken at the rate of 5% of base salary beyond the $141,000 limit up to the higher of the IRC 401(a)(17) / IRC 404(l) Annual Compensation limit, which for 2009 and 2010 is $245,000, or the higher amounts permitted for grandfathered employees under Chapter 113, P.L. 1997, whichever applies.

5. **Q:** Is the employer not permitted to make employer 8% matching contributions for any ABP member even if the contribution is funded through sources other than the State (i.e., federal grants, private endowments)?

   A: Yes, all employer contributions are limited to $141,000 as a result of this legislation.

6. **Q:** Will this have any effect on the calculation of benefits under the ABP's group life insurance benefit or Long-Term Disability benefit?

   A: No, the definition of base salary has not been changed by this revision and, since these benefits are calculated using base salary, there will be no change in how these benefits are calculated.

7. **Q:** Are College President's included in the cap?

   A: Yes. The provisions of Chapter 31, P.L. 2010, apply to all employees in positions covered by the ABP. The revisions to N.J.S.A. 18A:66-174 limit "…payment of the employer contributions to the alternate benefit program at a rate equal to 8% of the employee's base salary…" to "…8% of the maximum salary for department officers…" The revised statute makes no differentiation as to how employer contributions will be calculated for employees serving in different capacities. Therefore, this limit is imposed on all employees who are members of the ABP.

8. **Q:** Does the wage cap impact the amount of Long Term Disability and Life Insurance?

   A: No. Chapter 31, P.L. 2010, did not change the administration of the group life insurance benefit or the long-term disability benefit available under the ABP.

9. **Q:** If an employee changes employer during the calendar year, how does the new employer know the previous ABP compensation to ensure the annual limit is not exceeded?

   A: The Division is working toward a procedure that will allow for communication of year-to-date compensation from previous employment in these situations. Additional information concerning this process will be provided as it becomes available.

10. **Q:** Should the employer recoup any 8% employer contribution made for compensation over $141,000 paid prior to July 1, 2010, from the investment carrier and return it to the State?

    A: No. If an employee has reached the $141,000 accumulated base salary limit prior to the July 1, 2010 effective date of Chapter 31, P.L. 2010, no additional employer contributions are to be made toward that employee's ABP retirement annuity after June 30, 2010 and no recovery of employer contributions for the excess is required.

11. **Q:** What happens if an employee exceeded the limit after July 1, 2010?

    A: If the limit of $141,000 is reached on or after July 1, 2010, the employer is to cease making employer matching contributions under the ABP for compensation in excess of this limit. If an employer is unable to institute this change to affect payrolls after July 1, 2010, the employer is responsible for correction of any excess contribution through the appropriate investment provider's adjustment process.

12. **Q:** Can the employer submit contributions for an ABP member in excess of the limit imposed by Chapter 31, P.L. 2010, without seeking reimbursement from the State?

    A: No. Chapter 31, P.L. 2010, has changed the formula used calculate the employer contribution for ABP members effective July 1, 2010. Employer contributions above that limit are <u>not</u> authorized under the ABP.

13. **Q:** If an employer wanted to contribute (with non-state funds) the dollar equivalent of the 8% match over $141,000 to a non-ABP retirement account, such as a non-State 403b plan, would that be an option permissible under the law?

    A: The Division is not aware of any prohibition that would prevent a college or university from establishing a program other than the ABP for employer contributions covering a specific group of employees. However, the employer should consider consulting with its legal advisor before implementing any such program.

ADDITIONAL INFORMATION

If you have additional questions regarding Chapter 31, or any of the information provided in this letter, contact the Division's Office of Client Services at (609) 292-7524, or e-mail the Division at: *pensions.nj@treas.state.nj.us*