# LIEBERT CASSIDY WHITMORE

# MEMORANDUM

**CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED**

**DATE:** August 12, 2019 **CLIENT-MATTER NO.:** HU300/001

**TO:** Executive Committee
Humboldt County Association of Governments

**FROM:** Michael D. Youril

**RE:** PEMHCA Requirements

---

## I. INTRODUCTION AND OVERVIEW

Humboldt County Association of Governments ("HCAOG") elected to become subject to the Public Employees' Medical and Hospital Care Act ("PEMHCA"), effective January 1, 2001 by Resolution 00-17 to provide health benefits to its employees and retirees. At that time, HCAOG also adopted the "unequal method." Under the unequal method, a contracting agency may establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly contribution for annuitants is annually increased until the employer contribution for annuitants equals the employer contribution for employees. For HCAOG, the contribution for employees and annuitants will become equal in January 2021.

Although Resolution 00-17 set the employee contribution at $394 per month, HCAOG has modified the contribution through its adopted Personnel Policies ("Policies") each year based on changes in the cost of health insurance. HCAOG's Policies state that HCAOG will contribute 100% of the cost of health insurance for each employee, plus one dependent.

Under relevant PEMHCA rules, once the contribution under the unequal method for retirees catches-up to the contributions for employees, HCAOG must contribute at least the PEMHCA minimum contribution for each employee and retiree, which is currently $136 and is increased annually. In addition, the contribution for retirees and employees must be equal. As explained in more detail below, these rules are known as the minimum contribution rule and equal contribution rule.

If employees and retirees remain at the current benefits level, HCAOG will not have to determine whether any changes to retiree health care impact vested rights (i.e. rights that have accrued to the employee which cannot be changed or impaired under the contracts clauses of the state and federal constitutions).

In order to comply with the minimum and equal contribution rules, HCAOG can lower the contribution for employees and retirees to the PEMHCA minimum contribution. HCAOG can then provide an additional contribution for certain employees and retirees based on date of hire or provide additional contributions to employees during employment that are not available in retirement.

## II. DISCUSSION

### A. PEMHCA Rules

HCAOG participates in PEMHCA, which generally requires HCAOG to comply with the "equal contribution rule" and the "minimum contribution rule."

#### i. The Minimum Contribution Rule

Under the minimum contribution rule, with limited exceptions, an agency must contribute a minimum monthly dollar amount towards the enrollment of eligible employees and annuitants.[1] For 2019, the contribution is $136 per month. The contribution will be increased annually by the California Public Employees' Retirement System ("CalPERS") based on the medical care component of the Consumer Price Index. Agencies can fix the contribution at or above the statutory minimum, which is adjusted annually. An agency that participates in PEMHCA cannot reduce the monthly contribution below the statutory minimum. HCAOG's resolution currently sets the employer contribution above the statutory minimum.

#### ii. The Equal Contribution Rule

HCAOG, with limited exceptions, is also required to comply with the equal contribution rule. Under the equal contribution rule, the PEMHCA contribution must be equal for all employees and retirees within a "group or class."[2] The equal contribution rule limits an employer's ability to create a second tier of benefits that will be applicable only to future employees or eliminate retiree medical benefits for future employees, while retaining the benefits for current employees and annuitants.

#### iii. The Unequal Method

The "unequal method" serves as an exception to the equal and minimum contribution rules. Under the unequal method, a contracting agency may establish a lesser monthly employer contribution for annuitants than for employees, provided that the monthly contribution for annuitants is annually increased by an amount not less than five percent of the monthly employer contribution for employees, until the time that the employer contribution for annuitants equals the employer contributions paid for employees.[3] The annual adjustment to the minimum monthly employer contribution for an annuitant may not exceed $100.[4] HCAOG must follow

[1] Gov. Code, § 22892(b). Generally, annuitants are retirees who meet certain enrolment requirements.
[2] Gov. Code, § 22892(b).
[3] Gov. Code, § 22892(c).
[4] *Id*.

this formula until the contributions for employees and retirees are equal. For HCAOG, this means that the contribution for employees and annuitants will become equal in January 2021.

### B. HCAOG Contributions

Subject to the annual increases under the unequal method, HCAOG is required to provide the same contribution to retirees and employees in the same group or class under the equal contribution rule. Under the unequal method, HCAOG must increase retiree contributions by five percent until the employee and retiree contributions are equal. However, the benefits are just over a year from leveling out at this point in time, which will eliminate any differences between the contributions.

Since HCAOG is required to make contributions for annuitants, we recommend that HCAOG set forth the minimum contribution separately and provide additional amounts separately. Otherwise, HCAOG retirees are entitled to the same contribution received by employees.

This method involves designating the PEMHCA minimum contribution as HCAOG's PEMHCA contribution. For 2019, the minimum monthly contribution is $136. For 2020, the minimum contribution will rise to $139 per month. HCAOG would then state in its policies that employees hired before a specific date receive an additional contribution. Only the employees hired before the specified date receive the additional contribution. In addition, the benefit could be structured so that employees receive additional contributions that are not made when they retire. Although designating the payment as outside of PEMHCA is really a fiction, CalPERS has not challenged it and we are unaware of any cases where the method has been challenged in court. Many agencies have negotiated similar agreements or adopted similar policies.

### C. Recommended Sample Language

Medical Insurance Benefits

*Tier 1 – All employees hired by HCAOG on or before [FUTURE CUTOFF DATE]:*

HCAOG will contribute directly to CalPERS on behalf of each employee the PEMHCA statutory minimum monthly employer contribution amount set annually by CalPERS. In 2020, the PEMCHA statutory minimum contribution is $139 per month. In addition, HCAOG will contribute an amount equal to the difference between HCAOG's PEMHCA statutory minimum contribution and the following amounts:

| | |
|---|---|
| Employee Only | [AMOUNT] |
| Employee + 1 | [AMOUNT] |
| Family | [AMOUNT] |

*Tier 2 – All employees hired by the HCAOG after [FUTURE CUTOFF DATE]:*

HCAOG will contribute directly to CalPERS on behalf of each employee the PEMHCA statutory minimum monthly employer contribution amount set annually by CalPERS. In 2020, the PEMCHA statutory minimum contribution is $139 per month.

[HCAOG can decide to include additional amounts for current employees that are less than the tier above. It can be structured so that employees get a larger contribution during employment and only receive the minimum contribution at retirement. HCAOG would add additional amounts here and leave tier two under the retiree section as currently written.]

**Retiree Health**

*Tier 1 – Annuitants hired by HCAOG on or before [FUTURE CUTOFF DATE]:*

For employees hired by HCAOG on or before [FUTURE CUTOFF DATE], who later retire under these Personnel Policies, and qualify as an "annuitant" according to PEMHCA, HCAOG will contribute directly to CalPERS on behalf of each annuitant the PEMHCA statutory minimum monthly employer contribution. In addition, HCAOG will contribute to a health savings account[5] maintained by HCAOG and in the name of the annuitant, an amount equal to the difference between HCAOG's PEMHCA statutory minimum contribution and the following amounts:

| | |
|---|---|
| Employee Only | [AMOUNT] |
| Employee + 1 | [AMOUNT] |
| Family | [AMOUNT] |

*Tier 2 – Annuitants hired by the HCAOG after [FUTURE CUTOFF DATE]:*

For employees hired by HCAOG after [FUTURE CUTOFF DATE], who later retire under these Personnel Polices, and qualify as an "annuitant" according to PEMHCA, HCAOG will contribute directly to CalPERS on behalf of each annuitant the PEMHCA statutory minimum monthly employer contribution.

## III. CONCLUSION AND RECOMMENDATION

Based on the rules governing PEMHCA and HCAOG's objectives, we recommend that HCAOG modify its Policies to reduce the PEMHCA contribution to the statutory minimum and provide additional contributions outside of PEMHCA.

[5] HCAOG could also use a health reimbursement account.