

LIAISON MEMORANDUM NUMBER 12-15

To: Agency Liaison and Payroll Officers

From: Cindy Rougeou
Executive Director

Re: Privatization

Date: July 17, 2012

Agencies considering privatization of functions should be aware of the consequences from a retirement plan perspective.

The Louisiana State Employees' Retirement System (LASERS) is a retirement system for employees of the state. According to retirement law, R.S. 11:403(11), an "employee" eligible for participation in LASERS is "any person legally occupying a position in state service."

Questions have arisen as to whether a private entity that takes over governmental functions may continue to pay employer contributions on behalf of an employee so that the employee remains in LASERS. The answer is probably no.

The issue would be whether or not the employees remain state employees. Clearly if the employee is no longer an employee of the state, but rather an employee of the private entity, he cannot be in a system designed for state employees. But, determining the employer in such a situation is extremely fact sensitive and would require a case-by-case analysis.

Additionally, there are potential tax qualification issues with allowing a private entity to make employer contributions to a governmental pension plan. LASERS is a governmental plan. It is the administrator of a single employer defined benefit pension plan under Section 401 (a) of the Internal Revenue Code. It is a public trust fund created to provide retirement allowances and other benefits for state officers and employees and their beneficiaries. Thus, the LASERS qualified tax status is dependent upon it being a governmental plan and to allow private entities to act as the employer may very well jeopardize this status for all members of LASERS.

If your agency is considering privatization and asking if employees are eligible to remain in the LASERS system, please consult with the Legal Division at LASERS.

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