

## True Grit – The New Wild West of Employee Benefits

By David McFarlane (Snell & Wilmer, Counsel) and Samuel Krause

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Same-sex marriage, healthcare reform, texting, tweeting, Facebook, LinkedIn, layoffs, deficits, un-retiring... it's a new wild west for employers and human resource departments who will need to provide pension and benefits to their workforce.

Let's take same-sex marriage. Ten percent of the states in the nation recognize it, as does the District of Columbia. Ten states allow same-sex unions or grant other rights. On both fronts, more states will follow, and soon. "Don't Ask, Don't Tell" is gone. The bottom line is that things are changing rapidly. It is not difficult to see that there will soon be a day when federal and state pension as well as employee benefits will be open to all married couples, regardless of sexual orientation. Court challenges to other federal and state pension and benefit laws are already working their way through the legal system. On Jan. 24, 2011, a federal judge ruled that three married same-sex couples could proceed with a lawsuit filed against the U.S. Treasury Department and the California Public Employees' Retirement System. The plaintiffs argued that the federal Defense of Marriage Act and a section of the Internal Revenue Code were used to deny same-sex couples the right to buy long-term care insurance. CalPERS had refused to make its long-term care insurance plan available to the employees' spouses on the basis that the two laws prevented the spouses from receiving favorable tax treatment. Employers should be prepared for changes to cost-structures, administration and terms of employee pension and benefit plans.

What about health care reform? The new health care laws affect employers and employees alike in terms of accessibility, costs, plan revision and administration. Arguably it will also impact the overall provision of employee benefits in the workplace. In a national survey of U.S. chief financial officers and senior controllers conducted by Grant Thornton LLP Oct., 30,

2010, 30 percent are planning to reduce health care benefits because employee benefits such as pensions and health care are their greatest pricing pressure – up 68 percent from six months earlier. Considering the upcoming mandatory nature of health care reform and the heightened cost of providing benefits overall, does this mean a significant reduction of certain other discretionary benefits like 401(k) matches, profit sharing, employee-assistance, educational, stock grants and other programs? As employers take stock of the overall cost of providing their workforce with benefits, it is very likely.

Will the reduction or elimination of certain pension and related benefits also lead to what Sun Life Financial in a recent survey calls the "Unretirement Index?" After conducting a survey last September, Sun Life reported that 52 percent of respondents expect to work at least three years beyond the Social Security eligibility age. "Unretirement" was defined by Sun Life as working at least 20 hours a week after reaching the Social Security eligibility age, which for baby boomers is 66 and 67. In a similar Canadian study, Scotiabank reported that two-thirds of Canadians plan to keep working after they officially retire. The survey also noted that about 5 percent expect to earn a comfortable retirement from expected lottery winnings and 4 percent from relying upon their children.

And what of pension plans – government plans, multiemployer (Taft-Hartley) plans, single employer defined benefit plans, cash balance plans, 401(k) plans, etc.? Year after year they get more restricted, more complicated and less funded. There is a complex web of laws governing them: ERISA, the Internal Revenue Code, TEFRA, EGTRRA, PPA, PFEA, OBRA, TAMERA to name a few. Governors in several states are talking of pension reform when faced with tens of billions of dollars in underfunding in public pension

plans. You need look no further than recent comments from governors in California, New Jersey, Washington, Virginia and Massachusetts. It is also becoming a big issue in New York where Mayor Michael Bloomberg is calling for a cut to pension plan benefit provisions. Multiemployer pension plans – once the jewel of labor relations – are under siege due to financial, demographic, political and judicial developments. A whole new era approaches in the way we think and plan for retirement, and how the vehicles, which were intended to secure our retirement, are designed, funded and administered. In-house and third party administrators of pension plans will soon need actuarial, accounting and law degrees to ensure complete adherence with the constant changing world of retirement benefits.

And let us not forget about executive compensation – the recent demon of Congress. Over the past two years various laws have attempted to reign in the amount of compensation provided to, or deferred by, executives and hold accountable the companies who provide such compensation by requiring more stringent public reporting or shareholder approval of same. Just think of the complexities of Section 409A and other Security and Exchange Commission rules.

Combine this with the new and evolving ways we communicate with one another, our employers and our providers. Social media has rapidly changed the way we get our information, make decisions and interact with our employers, colleagues and service providers. Texting, Twitter and Facebook are just a few areas that employers will need to grapple with as they develop guidelines and policies for use of these technologies by employees during work hours - balanced against a desire by the same employers who want to utilize these technologies to better address and respond to the desires and concerns of their workforce.

Yes, it will take some grit to forge through the rapid changes in this area. Employers should take stock of where they are in terms of employee benefit structure, cost and administration in order to ensure that current compliance and goals are met. At the same time, they should also ensure that they have built in sufficient flexibility in their plans and administrative procedures to accommodate a new frontier in benefit entitlement and delivery.



**David McFarlane**  
**213.929.2503**  
**[dmcfarlane@swlaw.com](mailto:dmcfarlane@swlaw.com)**

David McFarlane focuses his practice in employee benefits, executive compensation and human resources law. He has worked in these areas, in the United States and Canada, for more than two decades assisting many national and international high-profile clients with their employee benefits and executive compensation issues in corporate transactions, plan administration, regulatory compliance and bankruptcy.

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