

N.D.A.G. Letter to Weispenning (Oct. 13, 1989)

October 13, 1989

Mr. Jeff Weispenning
Deputy Commissioner
Department of Agriculture
State Capitol - 6th Floor
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Weispenning:

Thank you for your August 3, 1989, letter requesting my opinion on whether the Department of Agriculture is obligated to continue making group medical insurance premium payments to the North Dakota Public Employees Retirement System (NDPERS) on behalf of a former employee. I apologize for the delay in responding to your letter.

The former employee in question held a classified position from July 1, 1987, to June 30, 1989. In February, 1989, the former employee apparently aggravated an earlier injury by falling in the Capitol parking lot on the way to work. As a result of this accident, the Workers Compensation Bureau granted a disability benefit to the former employee. The Department of Agriculture retained the former employee on staff through June 28, 1989 (by utilizing annual leave, sick leave, and other administrative policies), at which time the Department of Agriculture placed the former employee on leave without pay through June 30, 1989. The 1989 Legislative Assembly eliminated the FTE attributable to the former employee, effective June 30, 1989, and, therefore, the Department of Agriculture applied the reduction-in-force procedures and terminated the employee's employment on June 30, 1989.

In your letter, you ask for my legal opinion on two issues. First, you ask whether a former employing department is required to pay a former state employee's group medical insurance premium when the employee was terminated as a result of a reduction-in-force and is currently receiving a workers compensation benefit. Second, if the former employing department is required to continue paying the former employee's group medical insurance premium, you ask how long this obligation continues.

N.D.C.C. § 54-52.1-06 provides that each state agency "shall pay to the board each month from its funds appropriated for payroll and salary amounts a state contribution . . . for each of its eligible employees enrolled in the uniform group insurance program . . ."

N.D.C.C. § 54-52.1-06 (emphasis supplied). "Eligible employee" is defined as follows:

54-52.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

....

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes disabled permanent employees who are receiving compensation from the North Dakota workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at last five months each year.

N.D.C.C. § 54-52.1-01(4). The issue in the present case arises because the definition of "eligible employee" includes the term "disabled permanent employees."

Although the definition of "eligible employee" is somewhat ambiguous, it is my opinion that this issue is controlled by statutory provisions that specifically establish the rights of former employees. N.D.C.C. § 54-52.1-03(3) states that

[U]pon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement will receive a deferred retirement allowance from a department, board, or agency, that employee or that employee's surviving spouse may continue as a member of the uniform group under this chapter.

The statute further provides that each former employee is required to "pay directly to the board the premiums in effect for the coverage then being provided." Id.

N.D.C.C. § 54-52.1-03(4) provides that "[u]pon the termination of employment where the employee is not . . . entitled to either retirement benefits or a deferred retirement allowance, that employee cannot continue as a member of the uniform group unless the employee was on the uniform group insurance retiree billings as of July 1, 1974." N.D.C.C. § 54-52.1-03(4) further provides that "the employee may continue on an individual basis with the carrier, with such coverage to be offered at the lowest possible rate, determined by the board."

N.D.C.C. § 54-52.1-03(3) and (4) establish that an employee is entitled to continued health insurance coverage after termination if the former employee pays the premium. The former employing department has no legal obligation to make premium payments on behalf of a former employee.

It is my opinion that N.D.C.C. § 54-52.1-03(3) and (4) govern a former employee's entitlement to participate in the Uniform Group Health Insurance Program. I am not persuaded that the definition of "eligible employee" entitles former employees who

became disabled while working for the state to the payment of their health insurance premiums by their former employing agencies. It is my opinion, therefore, that the Department of Agriculture is not legally obligated to continue paying the former employee's health insurance premiums. To the extent this opinion is inconsistent with a May 13, 1986, letter from Assistant Attorney General Terry Adkins to Alan Person, that letter is overruled.

I hope this response is helpful to you.

Sincerely,

Nicholas J. Spaeth

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