

“The Borough released a Request for Proposals seeking a law firm to provide legal services relative to the Borough’s Non-Uniformed Employee Pension Plan. After reviewing responses, the Borough’s Pension Committee recommended awarding the contract to Rhoades & Owen, LLC, based on a review of several factors, including the applicants’ past record of performance with similar municipal clients, the quality and content of written proposals and/or interview presentation, specialized experience and technical competence, familiarity with applicable laws, and overall cost of services. Based on the above factors, Borough Council authorized awarding the professional services contract to Rhoades & Owen, LLC, at its public meeting on March 14, 2016.”

# RHOADES & OWEN

A Limited Liability Company

310 Grant Street  
Suite 1030  
Pittsburgh, PA 15219

Telephone No.: (412)765-2228

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E-Mail Address: [rrhoades@rhoadesowenlaw.com](mailto:rrhoades@rhoadesowenlaw.com)

February 8, 2016

Jeffrey Stonehill, Borough Manager  
Borough of Chambersburg  
100 South 2<sup>nd</sup> Street  
Chambersburg, PA 17201

**Re: Proposal - Chambersburg Borough Pension Related Legal Services**

Dear Mr. Stonehill:

In response to the Request for Proposals for Chambersburg Borough, please accept this proposal of our law firm, Rhoades & Owen, LLC. The proposal of our law firm follows the format utilized in the RFP. We would happy to supply any additional information or make a presentation as may be helpful to this process. We have included the original and 10 copies of our proposal.

Please see Exhibit A for our fee proposal.

## INQUIRY

### **B. Requested Services**

*1. Please document your experience related to the above matters over the last five years. Please specify how many Pennsylvania local governmental plan documents you have written in the last five years.*

**Response:** As far as we can tell, our law firm is the most experienced firm in Pennsylvania in dealing with local government pension matters. We provide advice with respect to more than 150 local government pension plans. Routinely we provide advice on plan documentation, benefit eligibility, qualification and calculation, legal issues associated with the investment of pension funds, fiduciary matters, issues associated with the operation of pension funds, eligibility and interpretation of Act 205, Act 600

and Act 44. Please find enclosed a general listing of certain of our governmental benefits services as well as a general listing of certain of our fiduciary services (Exhibits B and C).

Experienced, flexible and results driven are excellent descriptions of the core attributes that describe our work regarding local government pensions. Our work relative to local governmental pension plans is driven by the specifics of the individual situation. Based upon our expansive experience and our technical background, we can tailor our approach and advice to the situation. Often we find reciting the law is the easy part of the engagement. Determining the goals and desires of the client and presenting the options available complete with advantages and disadvantages of each option is one of the methods by which we provide value to our clients.

We are on the forefront of advising local government sponsors as to numerous freeze and new hire strategies. We probably give detailed legal advice relative to 8 – 10 pension freezes and related defined contribution projects each year.

Our firm publishes a number of "Governmental Pension Plan Updates" and "Alerts" each year. (See Exhibit F.) Also, our attorneys are frequent speakers with respect to governmental benefit matters.

We estimate we have written (or substantially amended 50 – 75) Pennsylvania local government plan documents in the last five years.

*To how many Pennsylvania local government pension arrangements do you provide legal advice?  
Please list five with contact information.*

**Response:** We currently provide benefits related legal services with respect to more than 150 governmental pension plans. In most of these engagements, we have updated the plans for legal compliance purposes within the past five years and provide legal consultation on specific benefit issues as the need arises. Five of these clients are as follows:

Stephanie Dean, CFO  
City of New Castle  
Municipal Building  
230 N. Jefferson Street  
New Castle, PA 16101-2220  
(724) 657-7027

Jeffrey Stonehill, Borough Manager  
Borough of Chambersburg  
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William J. Spagnol, Manager  
Municipality of Bethel Park  
Municipal Building  
5100 West Library Avenue  
Bethel Park, PA 15102  
(412) 831-6800

Timothy C. Grove, Finance Director  
City of Meadville  
984 Water Street  
Meadville, PA 16335-3407  
(814) 333-3311

Gary P. Hinkson, Manager  
City of Hermitage  
City of Hermitage  
800 North Hermitage Road  
Hermitage, PA 16148  
(724) 981-0800

Michael A. Thomas, Manager  
Borough of Plum  
4575 New Texas Road  
Plum, PA 15239-1197  
(412) 795-6800

*How many Act 600 pension plans do you provide legal advice to?*

**Response:** We provide advice to approximately 45 Act 600 pension plans.

*What percentage of the work performed by your firm is for Pennsylvania local governmental pension arrangements?*

**Response:** Currently governmental pension work constitutes about 60% of our work. Two attorneys will be leaving to form their own firm within the next few weeks. After their departure, 90% of the firm work will be Pennsylvania local governmental pension matters.

*What is the rate schedule to be utilized to perform the above work? Please supply an estimate to amend the Non-Uniformed Plan documents?*

**Response:** Please see Exhibit A.

**D. Firm Description**

*Provide general details on your firm including location, number of clients, number of governmental plans for which you provide services and employees and total service offered. Also specify the amount of Errors and Omissions coverage carried.*

**Response:** Our firm offices are located in the Pittsburgh area. We provide services to 200 – 300 clients. At present, our services are approximately 60% governmental benefits and 40% nonprofit legal advice. As two attorneys are leaving to form their own firm, our work will be 90% governmental pensions shortly. Please see the discussion associated with first inquiry associated with Requested Services above for more additional discussion of our governmental benefits practice. Our O and E coverage is \$1,000,000 per occurrence and \$3,000,000 aggregate.

**E. Individuals Providing Services**

*List the individuals who will be providing services to the Borough. A brief biographical summary of each should at minimum include the individual's title, professional designations and number of years of experience in the specified field. Also the responsibilities for providing services assigned to the individuals should be listed. Include any advisors or subcontractors to be employed.*

**Response:** We anticipate that Mr. Rhoades will perform the drafting associated with the defined contribution plan and respond to related issues and questions. Please see Exhibit D for the bios of Mr. Rhoades and Mr. Conley. Exhibit E is the Addendum to the bio of Mr. Rhoades. Mr. Conley will be available (if needed) for certain research and claims handling projects. Mr. Conley is currently forming a firm (and leaving our firm) and would be used as a subcontractor.

**F. Disclosure Form**

1. *List the names and titles of each individual who will be providing professional services relative to this contract including advisors and subcontractors.*

**Response:** Randall R. Rhoades, Esquire  
James C. Conley, Esquire may be utilized for certain work

2. *Relative to question 1 above, describe the following:*

- A. *Are any of the above current or former officials or employees of the Borough of Chambersburg? When were they last employed by the Borough of Chambersburg?*

**Response:** None are current or former employees

- B. *Are any of the above a registered federal or state lobbyist?*

**Response:** None are lobbyists.

- C. *What are the responsibilities of each individual with regard to the proposed services?*

**Response:** We anticipate Mr. Rhoades will complete the defined contribution drafting. Mr. Conley is available for research and claims handling.

3. *Have you in the last year or do you now retain a third-party intermediary, agent or lobbyist to directly or indirectly communicate with the Borough of Chambersburg?*

**Response:** We have not retained such an intermediary, agent or lobbyist.

4. *Has your firm or anyone in your firm solicited a contribution to any municipal office in the Borough of Chambersburg or to the political party or political actions committee of a municipal official at the Borough of Chambersburg or candidate for elected office at the Borough of Chambersburg?*

**Response:** No, we have not solicited such a contribution.

5. *Confirm that no one at your firm will communicate with (or cause or agree to allow a third party to communicate with) officials or employees of the Borough of Chambersburg after February 1, 2016, except for requests for technical clarification which should be directed to Jeffrey Stonehill, Borough Manager.*

**Response:** We so confirm.

6. *List all contributions made by your firm or an Affiliated Entity to a municipal official or candidate for office in the Borough of Chambersburg made on or after February 1, 2016. An affiliated entity means:*

- (1) A subsidiary or holding company of a lobbying firm or other business entity owned in whole or in part by a lobbying firm.
- (2) An organization recognized by the Internal Revenue Service as a tax-exempt organization under Section 501(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §501(c)) established by a lobbyist or lobbying firm or an affiliated entity.

**Response:** No such contribution has been made.

7. *List any direct financial, commercial or business relationship with any municipal official or pension system of the Borough of Chambersburg held by your firm or any Affiliated Entity.*

**Response:** We have no such relationship.

8 *List any gift including money, services, loans, travel, lodging, entertainment, discount or other thing of value, to any official, employee of the Borough of Chambersburg or a fiduciary of its pension plan.*

**Response:** We have made no such gifts.

9. *Confirm that no one at your firm or an Affiliated Entity was employed by the Borough of Chambersburg in the last 12 months.*

**Response:** We so confirm.

10. *Disclose all contributions of at least \$500.00 (singly or in the aggregate) made within the last five years by an officer, director, Executive-Level Employee or owner of at least 5% of your firm or an Affiliated Entity to any candidates for public office or the holders of such offices in the Commonwealth, and to any political committees of such candidates or office holders. An Executive-Level Employee is:*

- (1) *An employee of your firm or an Affiliated Entity who can either affect or influence the outcome of the actions, policies or decisions of your firm or the actions of an Affiliated Entity relating to pensions and the conduct of business with a municipality or pension system; or*
- (2) *Is directly involved in the implementation or development of policies relating to pensions, investments, contracts or procurement or to the conduct of business with a municipality or pension system.*

**Response:** We have made no such contribution.

11. *With respect to contributions disclosed in question 9, please provide:*

A. *The names and addresses of the individuals making the contributions;*

**Response:** None

B. *The relationship of the individual disclosed part A of this question to your firm.*

**Response:** None

C. *The name and office or position (held or sought) of the person receiving the contribution;*

**Response:** None made.

D. *The amounts of the contributions; and*

**Response:** None made.


E. *The dates of such contributions*

**Response:** None made.

12. *List any other disclosures made pursuant to Act 44 of 2009.*

**Response:** We have no such disclosure to make.

Very truly yours,

  
RANDALL R. RHOADES

RRR:hb  
Enclosures

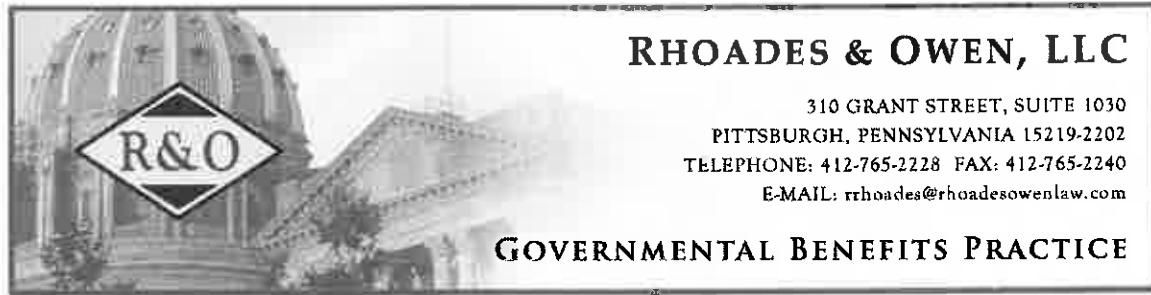


## **Exhibit A**

We intend to use the following current rate structure for our work: \$200 per hour. This rate schedule is a 30% discount to our private sector rates. Expenses (which should not be significant in this engagement) are in addition to the per hour charges.

Having performed many similar engagements, we estimate the cost to be between \$5,000 and \$7,500. Such fees are normally paid from Plan assets.

Exhibit B



***The R&O team provides proactive legal counsel in matters of governmental benefits to more than 200 government benefit plans across the Commonwealth.***

***R&O offers clients governmental benefits experience and expertise with attorneys who are not only versed in the law, but where each principal has trained with a CPA or actuarial firm.***

***Our services include:***

***Preparation of plan documents, including ...***

Converting ordinances and resolutions into comprehensive IRS Code-compliant plan documents

Updating benefit plans to comply with latest IRS enforcement position

Summary plan descriptions

Deferred retirement option plans (DROPs)

Domestic relations order-procedures (DROs)

Cafeteria plans

Early retirement incentive plans

Retiree medical benefits plan and trust documents

***Advocacy on behalf of plan sponsors in matters of ...***

Claims from participants

Submission of documents to IRS for approval

Contesting Auditor General findings and state aid reductions

DRO disputes

***Consulting in issues related to ...***

Fiduciary liability reduction

Minimizing plan expenses

Planning for best use state aid

Best utilization of member contributions

Pre-tax member contributions

Cost-saving benefit ideas

Act 44 - including disclosures and RFPs

Structuring of early retirement incentives and other severance arrangements

Retiree medical benefits

***Guiding clients in fiduciary matters, including ...***

Review and analysis of fiduciary matters

Techniques to media

te fiduciary exposure

Exhibit C



**Borough of Chambersburg  
Independent Pension Analysis and Consulting**

**The R&O team provides proactive legal counsel in matters of governmental benefits to more than 200 government entities across the Commonwealth.**

**R&O offers clients unsurpassed expertise with a professional staff of attorneys who are not only versed in law, but where each principal is also trained as a CPA.**

**Our services include:**

***Guiding clients in fiduciary matters, including ...***

Review and analysis of fiduciary risk, as well as investment risk, performance & expenses

Structuring and coordination of investment manager searches

Asset allocation studies, analysis of current investment position

Development of Investment Policy Statement, monitoring ongoing investment performance

Analysis of custodians

Transition of funds between managers

Research and education for fiduciaries

***Consulting in issues related to ...***

Fiduciary liability reduction

Creation of defined contribution plans

Minimizing plan expenses

Planning for best use state aid

Best utilization of member contributions

Pre-tax member contributions

Cost-saving benefit ideas

Structuring of early retirement incentives and other severance arrangements

Retiree medical benefits

Cost reduction strategies

## Exhibit D

### BIOS

**RHOADES & OWEN, LLC**  
**310 GRANT STREET, SUITE 1030**  
**PITTSBURGH, PENNSYLVANIA 15219**

Telephone No.: (412)765-2228  
Facsimile: (412)765-2240

**RANDALL R. RHOADES**, born Pittsburgh, Pennsylvania, 1956; admitted to bar, 1981, Pennsylvania. *Education:* University of Pittsburgh (B.S. 1978; J.D. 1981); *Member:* University of Pittsburgh Law Review; Certified Public Accountant, Pennsylvania, 1983 Allegheny County Bar Association. **PRACTICE AREAS:** Business Law; Employee Benefits - Cash Balance Plans, COBRA, Employee Benefit Taxation; Employee Benefit Trusts; Employee Compensation; ERISA; ERISA Compliance; Executive Compensation; Executive Compensation Taxation; Flexible Benefit Plans; Fringe Benefits; Health Benefits; Municipal Pension Law; Profit-Sharing Plans; Pension Fund Investments; Pension Plans; Pension Taxation; Profit Sharing; Retirement Benefit Plans; Taft-Hartley Plans; 401(k) Plans; and Employment Tax. Mr. Rhoades spent ten years with a mid-sized law firm where when he left, he was head of the Business Practice Group. Mr. Rhoades founded the law firm in January 2000.

**JAMES C. CONLEY**, born Pittsburgh, Pennsylvania, 1956; admitted bar, 1995, Pennsylvania and U.S. District Court, Western District of Pennsylvania; *Education:* Allegheny College (B.S. Economics, 1978); Duquesne University (J.D. magna cum laude, 1995). Associate Comments Editor, Duquesne University Law Review; Law Clerk, Pennsylvania Commonwealth Court, 1995-1997; Certified Public Accountant, Pennsylvania, 1989. **PRACTICE AREAS:** COBRA, Employee Benefit Taxation, Employee Benefit Trusts, ERISA, Flexible Benefit Plans, Fringe Benefits, Health Benefits, Pension and Profit Sharing Plans, Pension Fund Investments, Pension Plans, Pension Taxation, Profit Sharing, Public Employee Retirement, Public Pension Plans, Qualified Retirement Plans, Retirement Benefit Plans, 401(k) Plans, Municipal Pension Law. Mr. Conley joined Rhoades & Owen in 2001.

## **Exhibit E**

### **Addendum to Biography of Randall R. Rhoades**

Randall Rhoades has made public sector pension, employee benefits and taxes one of his core practice areas over the last fifteen years. He has what he believes to be the largest collection of public sector clients in Pennsylvania that rely on him to answer, solve and anticipate pension, employee benefit and tax issues before they become problems. He has developed this expertise and client base because he understands the legal needs of the public sector and he delivers results for his clients. The base of knowledge necessary to advise the public sector with respect to pension and benefit matters is completely different from that needed for private sector clients. Certain of his clients are listed in the attached representative list of certain public sector clients.

Mr. Rhoades is skilled at advising public entities with respect to the operation and maintenance of public sector pension plans. Pursuant to State law, each member of Chambersburg Borough or any entity which exercises discretion over the administration or operation of the pension plan, is a fiduciary with respect to the operation and maintenance of the Borough's benefit arrangements. This liability must be scrupulously monitored and protected. Mr. Rhoades has written and spoken extensively with respect to protecting entities and individuals with respect to Trustee and fiduciary liability.

Mr. Rhoades has extensive experience in the legal and tax aspects of benefits and pension matters. As an example, he is called upon daily to offer tax advice associated with federal, state and local tax issues including payroll, sales and use and federal excise taxes. He has established nearly every conceivable type of benefit plan from a simple premium conversion welfare benefit plan to complex defined benefit arrangements with multiple levels of benefits based upon hire date.

Mr. Rhoades offer a wealth of experience solving pension and benefit and tax problems at the administrative level. For instance, he is well recognized at the Washington Office of the Internal Revenue Service that deals with governmental pension matters. He corresponds frequently (normally weekly) with the Auditor General's Office and the Pennsylvania Public Employees Retirement Study Commission. Mr. Rhoades was engaged to represent the Pennsylvania League of Cities and Municipalities with respect to negotiations with the Auditor General's Office concerning a position taken by that office that he believes is not founded in law. In addition, he has utilized newly established programs of the Internal Revenue Service that allow for the creative resolution of benefit matters.

Mr. Rhoades assists a great number of public sector clients with respect to pension and benefit policy development. For instance, he has constructed creative early retirement windows that induce employees to retire earlier than anticipated with little or no cost (and have even resulted in great savings) to the employer. Clients turn to Mr. Rhoades for such things as

automobile and tuition reimbursement policies and creative approaches to benefits such as pre-tax parking plans.

Often in conducting the above work, Mr. Rhoades is asked to conduct legal research and draft legal memoranda on pension, employee benefit and tax issues. For example, a number of firm clients were confronted by an adverse Commonwealth Court pension ruling, which was not reviewed by the Pennsylvania Supreme Court. On behalf of these clients, Mr. Rhoades produced an extremely detailed technical record and advocacy document that was submitted to numerous members of the State Legislature and their staff. This document resulted in legislation being passed which annulled the impact of the Commonwealth Court case. This is the type of attention that clients of Mr. Rhoades enjoy.

When engaged to represent a governmental sector client, Mr. Rhoades produces results. The work done on behalf of the Housing Authority of the City of Pittsburgh is a good example. It was under the guidance of Mr. Rhoades that the Housing Authority moved its investments from interest-bearing vehicles into the equity markets (advice regarding specific equity selection was rendered by an independent consultant). This shift in investment strategy has produced significant appreciation in plan assets over and above what would have been achieved with the prior investment in insurance contracts. It was also through Mr. Rhoades' technical guidance that the Housing Authority instituted litigation against its pension plan Administrator and recovered in excess of \$400,000 in a settlement with the Administrator's insurance carrier.

Mr. Rhoades makes numerous presentations yearly to governmental audiences with regard to pension benefit and tax matters. He writes articles that are routinely published in publications across the State on this subject. Additionally, he is editor of the Rhoades & Owen, LLC *Governmental Benefits Update*. Mr. Rhoades has been asked to testify before the State Senate with regard to public sector pension matters.

Mr. Rhoades is expert at anticipating and solving pension issues before they turn into expensive grievances and arbitrations. To provide such proactive advice takes comprehensive knowledge of governmental pensions. Most other attorneys attempt to provide legal advice as merely an adjunct to their bargaining expertise. This is a significant mistake. An article of Mr. Rhoades published in a recent edition of The Pennsylvanian, a magazine for municipalities across the State, touches on this subject. Other attorneys you may consider will not have the technical ability to anticipate and solve pension, employee benefit and tax issues before they become problems.

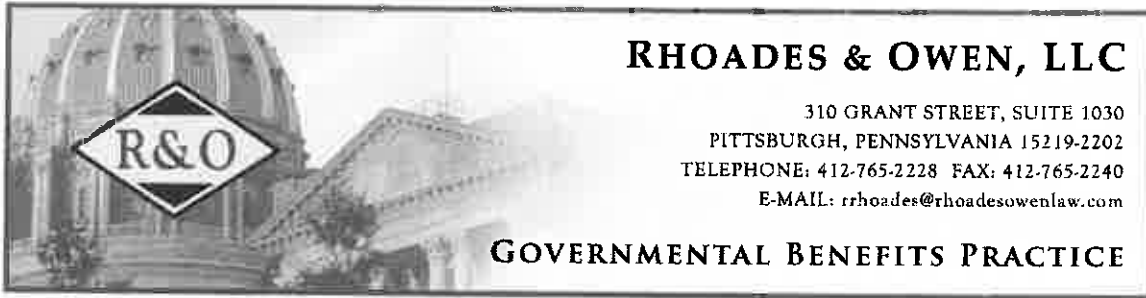
Two case studies demonstrate the comprehensive knowledge of the Rhoades & Owen attorneys and the proactive approach of these attorneys that allow them to provide quick and efficient fixes to very significant problems. Mr. Rhoades was engaged by the Municipality of Bethel Park several years ago. When he was engaged, the Police Pension Plan was burdened with pension litigation that had been outstanding for a number of years and had a pending pension benefit grievance. In addition, the investments were inappropriate and had performed poorly and the participants were making significant contributions on an after-tax basis. Over a

period of approximately two years, Mr. Rhoades solved the outstanding litigation and resolved the grievances to the satisfaction of the participants and the municipality. In addition, a meaningful, logical investment scheme was put in place that has produced millions in excess of what would have been produced. Additionally, Mr. Rhoades qualified the Plan document with the IRS and received a Determination Letter from the IRS and a Ruling from the Treasury Service allowing for member contributions on a pre-tax basis. Relations between the police officers and the Municipality with regard to benefit matters are now very good. Mr. Rhoades is seen by both the police officers and the Municipality as the advocate of the Plan whose judgment has led to important and significant gains for both participants and the Municipality.

Mr. Rhoades was engaged by the Borough of Middletown with respect to significant issues associated with the Police Pension Plan. Mr. Rhoades settled a pension issue to the delight of the participants and Municipality, found a way to take illegal investments out of the Plan and has found a way to significantly cut future costs of benefits to the Municipality. In addition, he negotiated a "free out" under the pension investment contract. Through tactful negotiations, the insurance company is allowing the Plan to avoid a significant liquidation charge as assets under the insurance contract are taken out of the contract and put into the equity market. Mr. Rhoades has accomplished in short order what the others were unable to accomplish in more than three years of effort.

In addition to a great number of years as a practicing tax and pension attorney, Mr. Rhoades is also a CPA (currently on inactive status). This combination of expertise allows him to provide efficient tax expertise to governmental entities across the State.

Certain public sector pension clients and contact people are listed on the list of certain public sector clients in our proposal.



## RHOADES & OWEN, LLC

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GOVERNMENTAL BENEFITS PRACTICE

# Governmental Benefits Update

Pub. 16gbu-1

### ANALYZE YOUR SOCIAL SECURITY PARTICIPATION ISSUE IF YOU HAVE PART-TIME EMPLOYEES

As many local government officials are aware, the Social Security laws applying to local governments are not the same as those that apply to private industry. In general, all private industry employees are required to participate in Social Security and Medicare, and their employers must make the employer contribution to Social Security as well. However, due to issues of federalism, the same principles do not apply to local governments.

Local governments are not required to participate in Social Security if they provide a certain level of retirement benefits. Local governments, however, do have an option of participating in Social Security through what is commonly known as a Section 218 Agreement. While the complexities of the Social Security Section 218 Agreement are beyond the scope of this article, chances are that if your local government employees are participating in Social Security, it is pursuant to Section 218 Agreement process. It is important to recognize, however, that there are some significant limitations upon a local government's ability to exclude their employees from participation in Social Security.

In order to exclude a local government employee from participation in Social Security, a prerequisite is that the local government employee must be a member of a qualified public retirement system. As a general matter, this means that the retirement system must provide benefits roughly equivalent to that provided by Social Security. In the case of a defined contribution plan, the Social Security Administration has stated that a defined contribution plan that requires a contribution of 7.5% of compensation would be an equivalent system. For the vast majority of local governments, providing a qualified retirement system is not much of an issue as almost all full-time government employees in Pennsylvania are covered by some type of a retirement system. Many of these retirement systems are defined benefit plans that are established by statute and generally would be considered a qualified plan for the purposes of Social Security. However, many



local governments' retirement plans, including statutory plans, exclude part-time employees. As part-time employment becomes more common with local governments, officials must be careful to comply with Social Security law regarding part-time employees.

If the municipality does not participate in Social Security and it does not cover a part-time employee in one of its retirement plans, it is potentially in violation of the Social Security law. While there are some limited exceptions, part-time employees not participating in a local government retirement plan and not covered by an exception generally should be participating in Social Security. Failure to have these employees participate in Social Security can lead to significant problems for the local government. The Internal Revenue Code imposes significant excise taxes for failure to withhold Social Security in those circumstances. There are some provisions in the Internal Revenue Code that allow an interest-free penalty free correction of the failure to have an employee participate in Social Security, but those correction methods can only be used within a certain period of time and before the Internal Revenue Service becomes aware of the problem. Therefore, it is very important for employers to review the participation of their part-time employees, and for that matter, all their employees, before the IRS detects any problems.

For municipalities that do not cover all employees under Social Security, we recommend that they review their payrolls periodically to determine which employees are not participating in Social Security. If there are any such employees, they should then assess whether that employee is participating in a qualified retirement system. If there are employees that are neither participating in Social Security or a retirement system, a more complicated analysis to determine whether there are any exceptions that allow this employee not to participate in Social Security must be performed. This is a complicated undertaking that should probably be accomplished with the assistance of a legal professional. If you would like our assistance in a project such as this, please do not hesitate to contact us.

#### **AFFORDABLE CARE ACT DEVELOPMENTS RELEVANT TO GOVERNMENTAL EMPLOYERS**

***Payment plans that reimburse employees for health care premiums purchased by employees in the market place violate the ACA.***

With the advent of the Affordable Care Act some governmental employers may be considering providing employees with cash reimbursements for premiums that the employees pay for health insurance that the employee purchases through health care exchanges or directly from health insurance carriers. Recent guidance from the Internal Revenue Service suggests that this could be a serious mistake.

In Internal Revenue Service Notice 2015-87, the IRS takes the position that a payment plan that reimburses employees for individual market based coverage, either through a health reimbursement plan or a cafeteria plan, is a group health plan subject to the Affordable Care Act's prohibition on annual dollar limits. Because these payment plans limit reimbursement to the amount of the premium, they fail the annual dollar limit prohibitions and therefore, violate the ACA.

The upshot of the IRS's position is that, in general, it is not possible for an employer to reimburse active employees for buying health care coverage in the market place. (There is an exception in the law for payment plans which are limited to retirees only.) Municipalities reimbursing employees for health coverage purchased in the marketplace may need to change that arrangement.

***Application of controlled group rules to governmental employers when determining whether employer is covered by the Affordable Care Act's employer mandate.***

Starting in 2016, all employers with more than 50 full-time equivalent employees (applicable large employer (ALE)) will have to offer health care coverage meeting the Affordable Care Act's standards or face financial penalties. The Affordable Care Act uses the employer aggregation rules for controlled groups to determine whether related employers are a single employer for purposes of determining whether these rules. Internal Revenue Code rules on aggregation of controlled groups under 414(b),(c), (m) and (o) provide that (1) corporations that are part of a controlled group of corporations, (2) groups of other types of entities that are under common control, and (3) members of an affiliated service group may in each case be treated as a single employer for certain employee benefit requirements. Those provisions, however, do not specifically address how those standards apply for governmental entities. Therefore, governmental entities may use a good faith interpretation of IRC 414(b),(c),(m) and (o) to determine whether they are an ALE.

Where this could come into play is with municipalities that create authorities, or have other affiliates, as depending upon circumstances, there could be an argument that a municipality and an authority (or affiliate) form a controlled group. Municipalities in this situation that do not provide Affordable Care Act compliant health coverage may want to look at this issue.

**For additional information, feel free to contact our attorneys at Rhoades & Owen:**

Jim Conley	412-765-0535	<i>jconley@rhoadesowenlaw.com</i>
Jack Owen	412-765-1020	<i>jowen@rhoadesowenlaw.com</i>
Randy Rhoades	412-765-2228	<i>rrhoades@rhoadesowenlaw.com</i>
Susan Ott	412- 417-7313	<i>sott@rhoadesowenlaw.com</i>

***The information in this publication is provided for information purposes only and is not to be construed as legal advice or to suggest the suitability of action in a particular case.***

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