



STATE OF WISCONSIN
Department of Employee Trust Funds
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 SECRETARY

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Correspondence Memorandum

Date: March 2, 2018

To: Employee Trust Funds Board

From: David H. Nispel, General Counsel
 Dan Hayes, Attorney

Subject: Status of Pending Legal Cases

This memo is for informational purposes only. No Board action is required.

This memorandum is presented quarterly to inform board members about the status of pending or recently concluded legal cases involving the Department of Employee Trust Funds (ETF) and/or the retirement boards. In order to maintain Wisconsin Retirement System (WRS) member confidentiality, the names of the parties and case numbers are not identified in this memorandum.

The purpose of the memorandum is to inform Board members of litigation in which the Boards and/or ETF are parties, not to provide legal advice concerning the cases listed. If there are any questions about a particular case, we will provide the name of the attorney handling it.

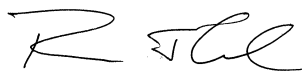
As of March 2, 2018, there are three cases that involve the retirement boards or ETF.

Case No. 1:

Issue – Uniform Benefits offered through the State of Wisconsin Group Health Benefit Program contains an exclusion for “Procedures, services and supplies related to surgery and sex hormones associated with gender reassignment.” The issue in this litigation is whether that exclusion violates Title VII of the Civil Rights Act of 1964, the Equal Protection Clause of the 14th Amendment of the U.S. Constitution and the Patient Protection and Affordable Care Act.

Summary – ETF, the Group Insurance Board and ETF Secretary Conlin, among others, are named defendants in a complaint filed in the United States District Court for the

Reviewed and approved by Robert J. Conlin, Secretary



Electronically Signed 3/14/18

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Western District of Wisconsin. The plaintiffs are two WRS members who are represented by the American Civil Liberties Union.

Status – The complaint was filed on April 7, 2017. On June 22, 2017, the state moved to dismiss various plaintiffs from the lawsuit. The motion has been briefed, and a decision is pending. In December 2017 plaintiffs filed their First Set of Requests for Admission, Interrogatories and Requests for Production of Documents. The state filed an initial response on January 16, 2018. In addition, plaintiffs' counsel has begun to schedule depositions to occur in April 2018.

Attorney – DOJ attorney.

Case No. 2:

Issue – Whether ETF erred in its determination that: 1) a member passed away in the same month as their duty disability effective date, so there is no benefit payable to the estate; and 2) in order for a death benefit to be payable to a surviving spouse or domestic partner, the member must have been married to the spouse or in a domestic partnership on their qualifying date, as determined by ETF.

Summary – On August 2, 2016, the surviving spouse of a member filed a Petition for Judicial Review in Dane County Circuit Court to appeal a final decision by the Wisconsin Retirement Board that upheld ETF's denial. Both ETF and the Board are respondents in the case.

Status – On January 30, 2017, the court denied the Petition for Judicial Review and affirmed the final decision of the Wisconsin Retirement Board. The surviving spouse then appealed to the Wisconsin Court of Appeals. On December 7, 2017, the Court issued a decision again affirming the decision of the Board as well as the Circuit Court. The spouse did not file a Petition for Review in the Wisconsin Supreme Court, and the case is closed.

Attorney – DOJ attorney.

Case No. 3:

Issue – Whether ETF erred in its determination that a member was ineligible for a § 40.63 disability annuity because their employer did not certify that medical issues were a factor in his termination.

Summary – On October 26, 2016, the member filed a Petition for Judicial Review in Dane County Circuit Court to appeal a final decision by the Wisconsin Retirement Board that upheld ETF's denial. Both ETF and the Board are respondents in the case.

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Status – On February 22, 2018, the court issued a decision affirming the decision of the Board and Circuit Court.

Attorney – DOJ attorney.

Staff will be available at the Board meeting to answer questions.