Background Information on
MSRS-Correctional Disability Transfer to Retirement Provision

Minnesota Statutes, Section 352.95, Subdivision 5, is the disability provision of the Correctional Employees Retirement Plan of the Minnesota State Retirement System (MSRS-Correctional) which specifies how the status of disabilitants is changed when the individual reaches normal retirement age. The revisions to Section 352.95 during the early 1990s were recommended to the Legislative Commission on Pensions and Retirement by public pension plan administrators as part of a broad effort to revise Minnesota public safety disability provisions to comply with federal requirements. The intention was to comply with the federal Age Discrimination in Employment Act (ADEA) and to avoid discrimination in employment against older workers. Revisions were made in the disability provisions in the main public safety plans: MSRS-Correctional, the State Patrol Retirement Plan, and the Public Employees Police and Fire Retirement Plan (PERA-P&F).

The revisions that were made to MSRS-Correctional illustrate the changes made to all three public safety plans.

Summary of Minnesota Statutes 1992, Section 352.95, the MSRS-Correctional Disability Benefit Provision

It is useful to summarize relevant portions of Minnesota Statutes 1992, Section 352.95, before any of these changes had occurred. Under the 1992 statute, a covered correctional plan employee who became disabled and unable to perform the duties of the position could qualify for a job-related or non-job-related disability benefit if the individual was less than age 55, the normal retirement age for this plan. An individual who became disabled at age 55 or above was prohibited from filing for an MSRS-Correctional disability benefit. Instead, the person could retire.

For individuals who became disabled prior to age 55, the statute specified that a member's disability benefit would continue to age 62 if the individual remained disabled, and the individual would then be transferred to the retirement roll with a retirement benefit equal to the previous disability amount. If the individual did not elect an optional annuity (an annuity providing coverage to both the individual and spouse) at the time the disability benefit was first provided, he or she was given a second chance to elect an optional annuity when the disability-to-retirement transfer occurred at age 62.

ADEA Compliance Problem

The presumed justification for denying disability benefits to those who became disabled at age 55 or later was that the individual was already at or beyond normal retirement age. Age 55 is the normal retirement age, the minimal age a person can retire without incurring a reduction due to early retirement, in MSRS-Correctional, the State Patrol Retirement Plan, and PERA-P&F. The individual could retire and receive a retirement annuity, which was easier for the plan staff and possibly cheaper for the pension fund than permitting a disability benefit. The disability determination process and subsequent reviews add to plan expenses and require staff time. The staff must review the application, ensure that proper medical examinations are provided, and ensure that medical reports are submitted and reviewed by the plan's medical advisor. Monitoring a disabilitant requires periodic follow-up medical evaluations and staff review to determine if the person continued to be disabled. Rather than incur these costs for an individual who was already at or above normal retirement age, the law simply prohibited these individuals from submitting a disability benefit claim, leaving the person the option to commence receipt of a retirement benefit.

However, prohibiting those age 55 or above from filing a disability application could be viewed as harmful and discriminatory to older workers. For certain short-service employees, the retirement benefit might be for lesser amounts than the disability benefit to which the person would otherwise be entitled. The retirement benefit is dependent upon years of service. (In MSRS-Correctional, the retirement benefit is based on the individual's salary near retirement (the average salary over a five-year period that provided the highest average, which is referred to as the "high-five salary"), years of service credit in the plan, and an accrual rate, which is the portion of the high-five average salary which the individual will receive per year of service. The retirement benefit is computed by multiplying the high-five average salary times the accrual rate times the years of service credit.) If an individual has little service credit in the plan, the retirement benefit would be minimal. Disability benefits were computed the same as a retirement benefit, except that certain minimums applied. If a non-job-related disabilitant had less than 15 years of service credit, the benefit was computed using 15 years of service credit. For a job-related disability benefit, the minimum benefit was based on 20 years of service credit. If an individual age 56 with ten years of service credit becomes disabled, he or she would be given a retirement benefit based on

ten years of service, rather than a similarly computed disability benefit based on 15 years of service if the disability was non-job related, or 20 years if the disability was job-related.

Commencing receipt of retirement benefits rather than being permitted to file for disability had other implications for the older workers, regardless of their length of service. If disabilitants recover sufficiently, they can return to covered employment and continue as active members of the plan, accruing additional service credit toward an eventual retirement annuity. Retirees can never return as an active plan members. If they could return, they would instead be treated as reemployed annuitants.

Summary of 1993 and Later Revisions to the Disability Provision

The following is a summary with some commentary on 1993 and later revisions to the MSRS-Correctional disability provision. The 1993 revisions and part of the 2001 and 2009 revisions were to specifically address ADEA compliance concerns.

- 1993 Revisions. The MSRS and PERA fund administrators became concerned that disability benefit provisions in their public safety plans might violate ADEA requirements, and they proposed in their administrative legislation to change public safety plan disability benefit provisions. Commission staff advised the Commission to delay consideration of the proposed age discrimination-related provisions for another year to permit a thorough review of ADEA requirements prior to acting on the proposal. The Commission and Legislature chose to pass the proposed provisions rather than to delay and study. As a consequence, questions remained about whether all of the changes made in 1993 and later for ADEA compliance were actually needed, and whether specific changes that were made reflect the most reasonable approach to address these problems.

  Based on the advice of the plan administrators on changes needed for ADEA compliance, two sets of changes were made in 1993 to the MSRS-Correctional disability provision, Section 352.95. The first change was in the job-related and non-job-related disability eligibility provisions (Subdivisions 1 and 2). These provisions, which had required that the individual be under age 55 to qualify for a disability benefit, were revised to allow qualification for disability regardless of age (Laws 1993, Ch. 307, Art. 2, Sec. 6-7).

  The second change (Laws 1993, Ch. 307, Art. 2, Sec. 8) specified when a disabilitant may elect an optional annuity if that option had not been elected when the individual first became disabled. Rather than an election at age 62, the provision was revised so that an optional annuity may be elected "within 90 days of attaining age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later." The Equal Employment Opportunities Commission (EEOC), which is responsible for creating an ADEA compliance manual and for enforcing the ADEA, had declared that the above-quoted language was a safe harbor and that employers who complied with these terms were not violating the ADEA. This second change made in 1993 was flawed, in part because other changes were needed for consistency but were not recommended at that time. The language within the same subdivision specifying the age 62 transfer date from disability status to retirement status was left unchanged. Thus, the age 62 transfer date language was not consistent with the age "65 or five-year anniversary" safe harbor language that was added later in the same subdivision in the optional annuity election. The opportunity to elect an optional annuity to cover a spouse or other person did not occur until three or more years after the transfer to retirement.

  The second problem with the safe harbor language was that there was no exploration of whether that language was appropriate within a public safety or quasi-public safety plan. The safe harbor language seemed geared to general employee plans, where age 65 is a reasonable normal retirement age. But MSRS-Correctional is a quasi-public safety plan, and, like the State Patrol Retirement Plan and the PERA-P&F plan, has an age 55 normal retirement age. Many years later, in 2009, plan administrators did recommend that the age 65 safe harbor language be removed from public safety and quasi-public safety plans.

- In 1996 (Laws 1996, Ch. 438, Art. 2, Sec. 2, Subd. 2) the non-job-related provision was revised to include individuals who become mentally unfit to perform their duties, rather than being limited to those who become physically unfit for duties.

- In 1997 (Laws 1997, Ch. 233, Art. 1, Sec. 27) benefit accrual rates for all MSRS-Correctional Plan annuities (retirement annuities, survivor annuities, and disability benefits) were revised. As part of these changes, the job-related disability benefit was reduced to use an accrual rate of 2.4% per year rather than 2.5%.

- In 2001 (1st Spec. Sess. Laws 2001, Ch. 10, Art. 3, Sec. 11-13), medical examination language was revised to be consistent with the revision a few years earlier which permitted disability claims based on being mentally unfit to perform duties. In 2001, the medical evidence subdivision was revised to permit psychological evidence to be used in the disability determination, and to allow psychologists to be used to examine the applicant and submit reports.

  The disability benefit section was also revised to have the disabilitant transferred to retirement status not at age 62, but at age 65 or the five-year anniversary of the disability, whichever is later. This later change addressed one of the problems noted in the discussion of the 1993 revisions by aligning the transfer to retirement date with the date for electing an optional annuity. What it failed to do was address the question of whether age 65 safe harbor language makes sense in a public safety or quasi-public safety plan.

- In 2004 (Laws 2004, Ch. 267, Art. 8, Sec. 5-7), provisions were revised by stating that the person must be expected to be disabled for at least one year in order to qualify for a disability benefit, and accepting chiropractors as professionals who may examine applicants and submit reports.

- In 2009 (Laws 2009, Ch. 169, Art. 2) significant changes occurred. Definitions of disability were added to the plan which resulted in more stringent requirements to qualify for a disability, and disability benefits were revised or became more restricted. Duty disability, replacing the job-related category, was added and defined as physical or mental disability resulting from performance of work duties. Regular disability, replacing non-job disability, was added and defined as a physical or psychological disability resulting from activity or illness while not at work, or while at work but not performing duties which present inherent dangers. The regular disability benefit was revised by eliminating the minimum 15-year benefit, and by requiring that the person must have at least three years of service to qualify. (In 2009 when this change was made, three years was the plan's vesting requirement.)

  Another significant change revised the flip date, the date that disabilitants shift from disability status to retirement status. This was revised from age 65 or the five-year anniversary of the disability, whichever is later, to age 55 or the five-year anniversary of the disability, whichever is later.

- In 2010 (Laws 2010, Ch. 359, Art. 1, Sec. 15), the minimum service requirement to qualify for a regular disability benefit was changed by deleting the three-year service requirement and instead requiring, for individuals hired after June 30, 2009, that the person be vested. Vesting for post-June 30, 2009, hires was revised from three years to a graduated vesting schedule, where the person is 50% vested at five years, 60% at six years, 70% at seven years, 80% at eight years, 90% at nine years, and fully vested at ten years of service.