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Will ACA Bail Out Unfunded Municipal Retiree Health Benefits?

Detroit and Chicago have announced plans to offload their unfunded retiree health plans onto the Affordable Care Act exchanges. The Detroit announcement predated the July 18th filing for bankruptcy protection. These cities believe they will save tens if not hundreds of millions in expenditures annually if they are successful in their intentions.

For the 61 largest cities in the nation, Pew Research has found that retiree health obligations under current contract or policies are only 6 percent funded. In Detroit that number is close to zero.

While the Affordable Care Act requires employers with 50 or more employees to offer health insurance to employees or pay a fine (presumably municipalities are covered, but it does not matter, they almost all provide insurance anyway), the Act does not cover retirees. So cities—and perhaps states—might look at what Detroit is planning and decide to follow suit. Many private companies and some governments stopped paying for retiree health care years ago.

There are two levels of the issue. Retirees and employees who have worked under contracts promising the health benefits in their retirement presumably cannot willy-nilly be deprived of those benefits by a unilateral cancelation by the employer. Folks already retired would have little incentive to make large concessions since they cannot lose their jobs if they refuse. Eliminating future retiree health benefits for current employees would require contract renegotiation. Therefore, for these groups, it would appear bankruptcy of the city might be the only way to have the promised benefits nullified. Health benefits for retirees and current employees who have no protection of a contract might be offloaded with or without filing bankruptcy.

For new employees who will be on labor contracts, the city could negotiate to eliminate retiree health benefits. And for non-contract employees it could simply adopt a no retiree health benefit policy. There are local Pennsylvania examples. In the City of Pittsburgh, police and fire personnel hired after 2005 do not get retiree health care the way employees working in those departments and employed prior to 2005 do. The Port Authority's largest union (its 2008 contract called for the union and the Authority to "jointly issue a statement with regard to their support for national health care") has language in its 2012 contract stating that employees hired on or after July 1, 2012 would be eligible for three years of retiree medical coverage, as opposed to previous stipulations that allowed coverage until Medicare eligibility if the employee had 25 years of service or had reached age 55 and had ten years of service.

Government employee pension benefits are sacrosanct in many states to the point of being constitutionally protected. That is certainly the case in Pennsylvania and Michigan. Whether

Federal bankruptcy judges will use Federal law to set aside state constitutions in the pension issue remains to be seen. At the same time, health benefits for retirees could be more easily dealt with in bankruptcy. But, for cities looking to dump retiree health benefits for employees and retirees working under contracts containing such provisions, get ready for lawsuits and labor unrest. Bankruptcy or threats of massive layoffs will almost certainly be needed to get meaningful results.

While the offloading of retiree health care onto the exchanges might be appealing to many hard pressed cities and towns, it might be more complicated than they think. On the other hand, if they have a strong enough case to file bankruptcy, retiree health costs might be the trigger to file.

In the larger picture, if cities are able to offload their retiree health promises to the Affordable Care Act, then US taxpayers will get a big share of the tab. Watching 58 year olds enjoy retirement from Detroit or Chicago city jobs and get Federally-subsidized health care until they reach 65 might not sit well with 60 year olds in the private sector who have no retiree health care until eligible for Medicare and have to keep working and keep paying taxes to subsidize the Detroit retiree's health benefits. Further, if this strategy turns into a flood of unexpected exchange participants, what happens to the projected expenditures? Undoubtedly, they will be off. And what if a bunch of private sector companies follow suit?

If a few large municipalities such as Detroit and Chicago are successful in reducing their expenses substantially by pushing retirees into the exchanges, there will undoubtedly be a flood of other municipalities around the country rushing to do the same. Moreover, there could be a number of school districts that could benefit from dumping retiree health benefits. In short, taxpayers might find themselves on the hook for funding much more health care than Affordable Care Act drafters imagined.

This is another unforeseen consequence of a health care law with seemingly unlimited ramifications and complications.

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