

Resolution 13-05

Statute of Limitations

September 13, 2013

WHEREAS, Utah Code Annotated § 49-11-613 establishes an appeals procedure to determine “any dispute regarding a benefit, right, obligation, or employment right under this title . . . ;” and

WHEREAS, Utah Code Annotated § 49-11-613(9) allows the Utah State Retirement Board (“Board”) to make rules to implement its appeals procedure; and

WHEREAS, since March 16, 1994, the Utah State Retirement Office’s (“URS”) practice has been to retroactively collect unpaid contributions back to this date; and

WHEREAS, URS repays overpaid retirement contributions to participating employers upon learning that they are overpaid; and

WHEREAS, the Board-appointed Hearing Officer’s recent decisions in both the Utah State Retirement Board v. URMMA, File No. 11-09R, and Utah State Retirement Board v. Kane County Hospital, File No. 09-22R, apply a three year statute of limitations to the collection of unpaid retirement contributions from participation employers by URS; and

WHEREAS, Utah Code Annotated § 49-11-203(1)(k) requires the Board to “develop broad policy for the long-term operation of the various systems, plans, and programs under broad discretion and power to perform the board’s policymaking functions, including the specific authority to interpret and define any provision or term under this title when the board or office provides written documentation which demonstrates that the interpretation or definition promotes uniformity in the administration of the systems or maintains the actuarial soundness of the systems, plans or programs;” and

WHEREAS, the Board desires to create a policy governing how URS shall apply a statute of limitations when resolving disputes regarding a benefit, right, obligation, or employment right under Utah Code Annotated Title 49 in order to create uniformity in the administration of the systems and to maintain the actuarial soundness of the systems, plans and programs;

NOW, THEREFORE, BE IT RESOLVED, a cause of action arises under Utah Code Annotated § 49-11-613 when a payment is or should have been paid, service credit is or should have been granted, notice is or should have been provided, or a claim is or should have been made.

THEREFORE, BE IT FURTHER RESOLVED, the three year statute of limitations to bring a claim based on a liability created by a statute of the state that is found in Utah Code Annotated § 78B-2-305 applies to actions brought under Utah Code Annotated § 49-11-613, unless otherwise specifically limited by Utah Code Annotated Title 49 (such as Utah Code Annotated § 49-21-401(10)), or by policy or contract.

THEREFORE, BE IT FURTHER RESOLVED, the common law equitable discovery rule shall apply to actions brought under Utah Code Annotated § 49-11-613, but only, as outlined in the applicable Utah case law, in the case of “concealment or misleading conduct” or “exceptional circumstances.” See *Russell Packard Dev., Inc. v. Carson*, 2005 UT 14.

This resolution shall take effect on September 13, 2013.