Court of Appeal Confirms Limits on Severance Payouts to Public Employees

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In *Koenig v. Warner Unified School District* (2019) 41 Cal.App.5th 43, the California Court of Appeal added to the legal landscape under Government Code sections 53260 and 53261, which limits severance payouts to public employees, while also addressing the important concepts of severance of illegal contract provisions in the context of an employment termination agreement. Warner Unified School District (District) was represented in this matter by Lozano Smith attorneys Sloan Simmons and Kyle Raney.

Background

In December 2012, the District and its then-superintendent mutually agreed to terminate the superintendent's employment one year early. Under the termination agreement, the District agreed to provide the plaintiff with a lump sum payment of $130,727.92, which was the value of one year of his salary, retirement plan contributions, monthly stipend for service on a charter school management team, and accrued but unused vacation. The termination agreement further provided for the continuance of the plaintiff's health benefits, as set forth in his initial employment agreement. The termination agreement included a severability clause which permitted the severance or excision of any illegal contractual term, while keeping the remainder of the agreement intact; an "integration clause" reflecting that the written agreement constituted the parties full agreement; and a term making clear that the parties each voluntarily entered into the agreement. Additionally, the termination agreement included language that the parties intended to comply with Government Code section 53260, which sets the maximum cash settlement that a terminated school district employee can receive at "an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract."

The District ceased providing the plaintiff with health benefits when it discovered, in November 2014, that the promise to continue the plaintiff's health benefits until the age of 65 or until Medicare took effect would violate Government Code sections 53260 and 53261, the latter of which limits the provision of non-cash settlement items to health benefits, which may only be provided for the same duration as is covered by the settlement or until the employee finds other employment. Accordingly, the District stopped providing the plaintiff with health benefits when he started a new job, and demanded return of the $16,607 it had expended to date pursuant to the illegal health benefit provision of the termination agreement. Despite there being no dispute as to the illegality of the continued health benefits provision, the plaintiff refused and sued the District for reinstatement of his health benefits under his employment agreement and to rescind the termination agreement. The District cross-complained, arguing that the termination agreement's promise to continue paying health benefits was void and unenforceable under Government

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Code sections 53260 and 53261, and the payments made in excess of the statutory maximum should be returned as an impermissible gift of public funds in violation of the California Constitution, Article XVI, section 6.

When the matter ultimately made its way to the Court of Appeal, the court entered judgment in favor of the District in the amount of $16,607, and remanded the matter to the trial court to determine the District's entitlement to attorneys' fees under the termination agreement. In the opinion, the court relied upon its previous decision in *Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471, in reaching the conclusion that both Government Code sections 53260 and 53261 limited the cash and non-cash benefits payable to the plaintiff upon his termination. In *Page*, the Court held that Government Code sections 53260 and 53261 applied to settlements upon termination of a local agency administrator's contract, regardless of the circumstances surrounding the termination. The court reached a similar conclusion in *Koenig* as to the illegality of the District's promise to continue benefits beyond the term of the original employment agreement. The resulting question, then, was what effect the illegal contractual provision had on the termination agreement.

On this point, the court reversed the trial court's holding that the illegal health benefits provision was not severable from the termination agreement. In reaching its decision, the court relied on well-settled contract interpretation principles which support the proposition that, where a contract has several distinct objects, of which at least one is lawful and one unlawful, in whole or in part, the contract is void as to the unlawful portion and valid as to the rest. The court held that "the unlawful provision governing health benefits was capable of being severed from the remainder of the termination agreement and severance was clearly warranted here." In exchange for the plaintiff's termination from employment and release of any potential claims against the District, the District agreed to pay him in excess of $130,000 (which was intended to be in compliance with Government Code section 53260), and continued health benefits. The sole illegality, the court held, arose from the provision for continued payment of health benefits beyond the settlement term of the termination agreement, and severance of the illegal term would further the interests of justice because it allowed the plaintiff to retain the lawful benefits, while preventing his receipt of an illegal windfall in the form of continued health benefits.

The court determined the termination agreement's promise to pay health benefits in excess of the statutory maximum should have been severed and the remainder of the agreement enforced in a manner that complies with Government Code sections 53260 and 53261. As a result, the court concluded that the plaintiff was entitled to payment for health benefits only for the duration of the term of his original employment agreement—until December 2013—the maximum duration permitted under sections 53260 and 53261. Any payments made for health benefits by the District after December 2013 were made in excess of the statutory maximum, and the District was entitled to repayment of that amount. This constitutes the first published appellate opinion applying the principles of severance to the terms of an employment termination agreement.

Takeaways

Koenig provides public employers with important guidance regarding the cash and non-cash items that might be included when terminating a public employment contract, and for how long a public employer can provide such benefits. Additionally, *Koenig* highlights the importance of drafting enforceable contracts for employment and termination, including the need for clear, ironclad language regarding severability, integration, and voluntariness. Although "boilerplate" language is often overlooked for its "legalese," the court's opinion relied upon, perhaps more than anything else, the termination agreement's incorporation of an enforceable severability clause, which was indisputable evidence of the parties' intent to sever any illegal provision of the agreement in favor of the whole.

For more information on the *Koenig* opinion, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app.