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## No Vested Right to Retiree Benefits Where Plan Included Anti-Vesting Language

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On October 28, 2021, the U.S. Ninth Circuit Court of Appeals issued an opinion in *Harris v. County of Orange* (9th Cir. October 28, 2021, No. 19-56387) \_\_\_ F.3d \_\_\_, reiterating the standard enunciated by the California Supreme Court in *Retired Employees Association of Orange County, Inc. v. County of Orange (REAOC III)*, creating a high burden on plaintiffs to be able establish an implied vested right to certain benefits. This standard ensures neither the public entity nor the public itself is blindsided by an unexpected, unintended financial obligation.

### Background

On April 6, 1993, the Orange County Board of Supervisors adopted a resolution establishing a retiree medical plan, in an attempt to reduce the County's workforce by enticing County employees to retire early. The resolution establishing the plan included the following language: "This Plan does not create any vested right to the benefits provided hereunder on the part of any Employee, Retiree or any other person."

Once the plan itself was established, the County entered into binding memorandums of understanding (MOUs) with the participating employee unions, agreeing to provide eligible retirees with medical insurance grants, among other retiree health benefits, during the term of the MOUs.

From 1993 through 2007, retired employees received the monthly grant benefit. However, in 2004, due to underfunding, the County negotiated agreements with each participating union to restructure the retiree medical plan, reducing the benefits provided to retirees. Three retired County employees filed a class action lawsuit against the County claiming the County had breached its contractual obligation to its retirees when it acted to reduce the grant benefit. The thrust of the plaintiffs' argument was that they had a vested right to the prior benefit amounts.

The lower court granted the County's motion for summary judgment, holding the plaintiffs failed to raise a material issue of fact to establish the County had intended to create an implied vested right to the grant benefit.

### Ninth Circuit Decision

On appeal, the Ninth Circuit agreed with the lower court. First, the court found the non-vesting intent was specifically included in the governing law of the County, through the Board of Supervisors' adoption of the 1993 resolution. Because existing County law specifically provided the grant benefits were not a vested right, the plaintiffs could not argue the MOUs contained terms in contradiction.

The court further found the MOUs themselves showed the parties did not intend for the grant benefits to vest, based on the MOUs' limited duration. With no express language that the benefit vested, the right to the benefit expired upon the MOUs' expiration.

The court was also unpersuaded by the plaintiffs' argument that because the County unilaterally drafted and implemented the anti-vesting language without engaging in negotiations with the union, that the plan was void. The court found that the plan was not unilaterally implemented because the unions were given the option to reject or negotiate different terms, but did not do so. Therefore, the anti-vesting term adopted by County resolution became a part of the MOUs with the unions by force of law and was expressly incorporated into them.

Lastly, the court disagreed that the grant benefit was deferred compensation and instead concluded the grant benefit was an optional, non-vested benefit, forfeitable if the retiree chose not to pay their portion of the insurance premium, all supporting the lower court's ruling.

## Takeaways

In line with this case, plaintiffs continue to bear a high burden to establish a public employer's intent to create an implied vested right to certain post-retirement benefits. Nevertheless, when passing a resolution establishing a retiree benefit, if the intent is to establish a non-vesting benefit, public employers should include clear language in the resolution to remove any doubt regarding its intent. In addition, employers should be thoughtful in crafting related MOUs to be consistent with the intent set forth by resolution, as any contrasting language within an MOU would control.

If you have any questions about this case, or any issue relating to employee or retiree benefits in general, 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 [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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