

**The Uniform
Management of
Public Employee
Retirement Systems Act
(UMPERSA)**

Department of Employee Trust Funds

March 24, 2006



Uniform Law Commissioners

The National Conference of Commissioners on Uniform State Laws

Uniform Anatomical Gift Act (1987)

Uniform Electronic Transactions Act (1999)

Uniform Management of Institutional Funds Act (1972)

Uniform Premarital Agreement Act (1983)

Uniform Probate Code (1969, revisions through 2003)

Uniform Prudent Investor Act (1994)

Uniform Statutory Form Power of Attorney Act (1988)

Uniform Transfers to Minors Act (1986)

Uniform Commercial Code (1987, 1990, 1994, 1999)

Model Marital Property Act (1983)

Scope of UMPERSA

- Intended to apply:
 - Throughout the State.
 - To most all plans exempted from ERISA as “governmental plans.”
 - As written, would affect more than just the Wisconsin Retirement System.

Scope of UMPERSA

- Does **not** apply to:
 - Disability insurance programs
 - § 403(b) annuity contracts/ custodial accounts
 - Arrangements with Social Security

Scope of UMPERSA

- Does **not** apply to:
 - Qualified governmental excess benefit arrangements
 - Severance pay arrangements
 - Individual retirement accounts (IRAs)
 - Worker's compensation benefits
 - “Top hat” plans

Twin Purposes of UMPERSA

1. Protect participants and beneficiaries
&
2. Free Trustees to use modern
investment practices

Protect participants & beneficiaries

- Clearly establishing the fiduciary duties of Trustees.
- Giving Trustees the powers to do the job.
- Holding Trustees responsible for their actions.
- Requiring the disclosure of information to the participants and beneficiaries so they can oversee the Trustees.

What's not in UMPERSA

- No requirement for public access to participant's personal records.
- No broad preemption of state laws, unlike federal Employee Retirement Income Security Act.
- No rules for the selection or composition of Boards of Trustees.

Regulates Management of Trust

- All retirement system assets must be held in trust
- Assignment or alienation of benefits is prohibited
 - Unless Legislature expressly decides an assignment or alienation is consistent with policy of protecting retirement benefits.

Key areas of UMPERSA

- Fiduciary duties of the trustees
- Trustee independence
- Liability of the trustees and other fiduciaries
- Oversight and enforcement

Trustee standards of conduct

- Each fiduciary shall discharge duties:
 - Solely in the interest of the participants and beneficiaries.
 - For the exclusive purpose of providing benefits to participants and beneficiaries.
 - Impartially.
 - Incurring only reasonable and appropriate costs.
 - In accordance with a good-faith interpretation of the law.

Trustee standards of conduct

- Must act with the care, skill, and caution (under the circumstances then prevailing) which a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose
- This falls between “prudent amateur” and “prudent expert” standard

The public employee trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment **at the lowest possible cost** of the benefit commitments to participants, as set forth in this chapter, and shall not be used for any other purpose. ...

-- Wis. Stat. § 40.01 (2)

Powers of Trustees

- Trustees retain powers already granted under state law.
- 3 basic trustee powers:
 - 1. Power to establish a sufficient administrative budget.
 - 2. Power to obtain the services necessary, through employment or contract.
 - 3. Power to procure and dispose of goods and property as necessary.

Standards of prudent investing

- Risk versus return is the main consideration.
- No restrictions on kinds of investment.
- Delegation permitted.
- Standard of prudence applies to total portfolio.
- Diversification of investments is essential.

Liability of Trustees

- Personally liable for any breach of duty.
 - Not just for “knowing and willful” breach.
- Liable for resulting losses to the system.
- Liable for profits made using Trust assets.
- Subject to other equitable remedies, including removal.

Liability of Trustees

- Limits ability of trustees to shift liability.
- No sovereign immunity defense available.
- Supercedes statutes limiting trustee liability.
- Voids any agreement to limit trustee liability.

Oversight and Enforcement

- Share information with participants and beneficiaries.
- Right of action to enforce fiduciary duties.

Right of Action

- Public employer, participant, beneficiary, or another fiduciary may sue under UMPERSA.
 - Enjoin act, practice, or omission violating Act.
 - Obtain equitable relief, including restitution.
 - Attorneys fees and costs (except to employer).
- Other causes of action under state law remain available.

Disclosure requirements

- Required reporting to participants and beneficiaries.
 - Fully informed about own rights and benefits.
 - Have information necessary for oversight of overall activities of Trustee and other fiduciaries.

Disclosure requirements

- UMPERSA requires 3 types of reports:
 - Summary plan description.
 - Annual disclosure of financial and actuarial status.
 - Annual report.

Current status of UMPERSA

- Approved by Uniform Law Commissioners, & recommended for adoption (1997)
- South Carolina modeled fiduciary duty, trustee liability and some “exclusive authority” provisions on UMPERSA (1998)
- Adopted in Wyoming (2005)
- Adopted [*kind of*] in Maryland (2005)

In summary, UMPERSA provides:

- To Trustees:
 - Independence, including budget and staffing power.
 - Exclusive authority over retirement system assets.
 - Established duties and standards of conduct.
- To Participants & Beneficiaries:
 - Required disclosures from Trustees.
 - Oversight and enforcement tools.



Summary Plan Description

- Comprehensive description of retirement program and its benefits
- Must be distributed to all participants, and to beneficiaries receiving benefits
 - Once, when new to system (or UMPERSA)
 - At intervals of no more than 5 years
 - Whenever updated
- Available to the public

Summary Plan Description

- Identify agents for service of process
- Describe non-forfeitable benefit provisions
- Circumstances causing disqualification, ineligibility, or denial or loss of benefits
- Source of financing of the program
- Organizations through which benefits are provided
- Date the fiscal year ends
- Procedures for redress of denied claims

Annual Disclosure of Financial and Actuarial Status

- Compilation of information about the retirement system
 - Financial position, by qualified public accountant
 - Actuarial status, by qualified actuary
- Limited required distribution
- Widely available upon request

Annual Disclosure of Financial and Actuarial Status

- Includes schedules of:
 - All assets held for investment purposes
 - Total FY investment expense + total FY general administrative expense as percent of asset FMV
 - Same expense percents for past 5 fiscal years
 - Rates of return, net of total investment expense, on assets of the system overall
 - Rates of return aggregated by category over the most recent 1-, 5- and 10-year periods
 - Rates of return on appropriate benchmarks

Annual Disclosure of Financial and Actuarial Status

- Names and business addresses of each trustee, member of a board, and other fiduciary
- Describe how each Board member was selected
- Statement of investment objectives & policies
- Description of material interests in any material transaction with the system
 - held by any public employer, any trustee, administrator or employee who is a fiduciary

Annual Report

- Summary of annual disclosure of financial and actuarial status
 - Only key financial and actuarial information
- Must be distributed to all participants, and to beneficiaries receiving benefits
 - Each year, after end of fiscal year.
- Available to public

“Retirement program” = all programs, rights, obligations established by public employer to provide retirement income to employees or to defer income of employees for periods extending to the termination of covered employment or beyond.

[UMPERS Act § 2 (19)]

“Retirement system” = all entities established or maintained by a public employer to manage one or more retirement programs or to invest or manage the assets of one or more retirement programs.

[UMPERS Act § 2 (20)]

“Independence is required because it permits trustees to perform their duties in the face of pressure from others who may not be subject to such obligations. In the absence of independence, trustees may be forced to decide between fulfilling their fiduciary obligations to participants and beneficiaries or complying with the directions of others who are responding to a more wide-ranging (and possibly conflicting) set of interests. ...”

-- UMPERSA Commentary