

MAJOR POLICY SHIFTS

1974

Wisconsin Statutes Section 40.23 (Retirement Annuities)

For active and new WRS members, the Wisconsin Legislature established a mechanism by which, after calculating the "core" annuity that the retiree can expect to receive annually, the WRS makes annual adjustments up or down based on fund investment performance, provided that a retiree's annuity never drops below the initial core amount.

1999

A.B. 495, Wisconsin Act 11

For WRS members active as of January 1, 2000, the Wisconsin Legislature raised the retirement benefits cap (the maximum initial annuity amount guaranteed by the state) from 65% to 70% of final average salary (excluding protective occupation employees with Social Security). The same legislation made other changes to WRS that did not alter guaranteed minimum benefit provisions, including changing actuarial assumptions about the assumed rate of return and across-the-board salary increases, approving a distribution from the Transaction Amortization Account (TAA), and replacing the TAA with a Market Recognition Account (MRA) used for distributing total market value investment return.

2011

Milwaukee County General Ordinance Section 201.24(5.1)(2)(f)

For Milwaukee Employees' Retirement System (ERS) active members and new hires represented by the Federation of Nurses and Health Professionals or by the Milwaukee Building and Construction Trades Council, Milwaukee County reduced the pension multiplier applied to retirees' final average salary (multiplied by years of service) used to calculate benefits from 2% to 1.6% starting January 1, 2012.

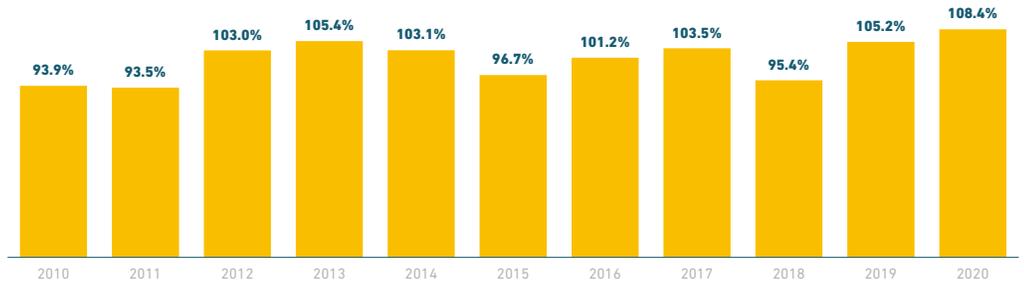
2011

A.B. 11, Wisconsin Act 10

For WRS active members and new hires, the Wisconsin Legislature (1) required employees to contribute 50% of the total actuarially required pension contribution rate (police officers, firefighters, and other protective occupations were exempted), where previously employers paid all or part of employee contributions; and (2) prohibited employers from paying required employee contributions on behalf of the employee. For new hires only, the legislature established a vesting period of five years. Previously vesting had occurred at the start of employment.

FUNDED RATIO

The graphic below covers the following retirement system: Wisconsin Retirement System (WRS).



LEGAL ENVIRONMENT FOR FUTURE POLICY EFFORTS

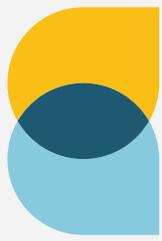
Legislative efforts confined to new hires are excluded from analysis because they rarely face significant legal challenges.

Table with 4 columns: Policy Shift, Relevant Policy Shifts, Legal Challenges, and Legal Prospects. Rows include: Increase Employee Contributions, Decrease or Eliminate Cost-of-Living Adjustments, Change Vesting Period, and Change Benefit Calculation.

\* FAVORABLE indicates that the issue survived litigation in the past and/or there is a permissive legal environment for the change. \* UNFAVORABLE indicates that the issue did not survive litigation in the past and/or there is a non-permissive legal environment the change. \* UNDEVELOPED indicates that the issue has not been litigated and/or the current legal environment is unclear as to what the outcome would be.

DISCLAIMER: Equable is not necessarily recommending any of the policy concepts listed above. Some of them may be good ideas, bad ideas, or involve trade-offs between various stakeholders. This document only provides information about the likely legal outcomes of pursuing different policy concepts by stakeholders. The document does not constitute legal advice or representation, and the authors are not liable for any actions taken relying on this information.





## WISCONSIN STATE LAW CONTEXT

### State Provisions

**WISCONSIN CONSTITUTION ARTICLE 1, SECTION 12:** “No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed.”

**WISCONSIN CONSTITUTION ARTICLE 1, SECTION 13:** “The property of no person shall be taken for public use without just compensation therefor.”

**WISCONSIN STATUTES SECTION 40.19:** “[R]ights exercised and benefits accrued to an employee under this chapter for service rendered shall be due as a contractual right and shall not be abrogated by any subsequent legislative act.”

**WISCONSIN CONSTITUTION ARTICLE 4, SECTION 26:** “(1) The legislature may not grant any extra compensation to a public officer, agent, servant or contractor after the services have been rendered or the contract has been entered into.... (3) Subsection (1) shall not apply to increased benefits for persons who have been or shall be granted benefits of any kind under a retirement system when such increased benefits are provided by a legislative act passed on a call of ayes and noes by a three-fourths vote of all the members elected to both houses of the legislature and such act provides for sufficient state funds to cover the costs of the increased benefits.”

### Key Opinions

#### **MADISON TEACHERS, INC. V. WALKER, 851 N.W.2D 337 (WIS. 2014)**

Two labor unions, Madison Teachers, Inc. and Public Employees Local 61 claimed legislation prohibiting employers from paying an employee’s share of required retirement contributions violated the Contract Clause of the Wisconsin Constitution (Article I, Section 12). The Wisconsin Supreme Court held that the prohibition was valid because employees had contractual rights in the pension benefits they would receive but not in their employer’s contributions toward those benefits. The legislation changed the allocation of plan costs between the employer and employee; it did not affect the benefits the employees would ultimately receive. *Madison Teachers, Inc. v. Walker*, 851 N.W.2d 337 at 383. Since the employees had no contract rights, the court did not analyze whether there was substantial impairment or whether the impairment was “reasonable and necessary to serve an important public purpose” as would be required if there had been constitutionally protected contract rights at stake. *Id.* at 384.

#### **STOKER V. MILWAUKEE COUNTY, 857 N.W.2D 102 (WIS. 2014)**

Active members of the Milwaukee County Employees’ Retirement System (MCERS) and Wisconsin Federation of Nurses and Health Professionals challenged as a common law breach of contract an ordinance reducing the retirement plan’s pension multiplier from 2% to 1.6%. The Wisconsin Supreme Court held that the employee did not have any prospective contract rights in the multiplier. Under the ordinance, the 2% multiplier applied to years of service the employee had already completed. The 1.6% multiplier would apply to her years of service going forward. According to the court, the multiplier benefits only accrued and vested “as county service is rendered.” *Stoker v. Milwaukee County*, 857 N.W.2d 111, 104. The county could unilaterally change the terms that would apply prospectively.

#### **WISCONSIN PROFESSIONAL POLICE ASSOCIATION, INC. V. LIGHTBOURN, 627 N.W.2D 807 (WIS. 2001)**

The Wisconsin Professional Police Association (WPPA) and Structural Engineers Association (SEA) challenged the constitutionality of 1999 Wisconsin Act 11 under Wisconsin Constitution Article I, Sections 12 (Contract Clause) and 13 (Takings); Wisconsin Constitution Article IV, Section 26; and Wisconsin Statutes Section 40.19(1). The Wisconsin Supreme Court held that the plaintiffs failed to show “beyond a reasonable doubt” that the legislation resulted in an unconstitutional impairment of contract or taking of property. *Wisconsin Professional Police Association, Inc. v. Lightbourn*, 627 N.W.2d 807 at 850. The act provided for a \$4 billion distribution from a retirement fund account to multiple other accounts for the purpose of reducing or “smoothing” the difference between the funds’ actual and paper values that result from unrealized investment gains or losses. The act also provided for allocating \$200 million in employer credits to help cover employer contribution obligations. WPPA argued that the distribution from the account to other reserves was a taking, as not all employees would receive the full benefit of the distribution. WPPA also claimed the distribution impaired statutory contract rights. The court reasoned that there were no takings or contract impairments because neither the transfer nor the employer credit affected the amount of vested benefits that employees would receive, and there was no evidence that the transfer or credit would make the fund financially troubled. *Id.* at 850, 856.

Finally, WPPA claimed that raising the cap on the percentage of final salary that retirees would receive from 65% to 70% for some — but not all — employees violated the equal protection clause of the U.S. Constitution. The court found that the legislature had a rational basis in classifying and treating one group (protective occupation employees) differently because this group was “among the most expensive employees to maintain.” *Id.* at 861. The legislature had both a policy and an economic basis “to encourage protective occupation participants to retire at the normal retirement age.” *Id.*

For additional information and context about Wisconsin’s annuity adjustment mechanism, see Equable’s case study *Calm Amid the Chaos: Wisconsin’s Pension System and the 2008 Financial Crisis* (Jan. 31, 2020).

### FOR MORE INFORMATION

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