



## ERIE COUNTY WATER AUTHORITY INTEROFFICE MEMORANDUM

To: Jerome D. Schad, Chair  
Mark S. Carney, Vice Chair

Cc: Daniel J. NeMoyer, Director of Human Resources  
Joyce Tomaka, Comptroller  
Penelope A. Porebski, Employee Benefit Specialist

From: Terrence D. McCracken, Secretary  
Karen A. Prendergast, Chief Financial Officer  
Margaret A. Murphy, General Counsel  
Russell J. Stoll, Chief Operating Officer  
Leonard F. Kowalski, Executive Engineer

Date: April 22, 2020

Subject: Revised Policy No. 12.0 Termination and Severance Pay Policy  
Revised Policy No. 46.0 Medical Coverage for Retirees  
Revised Policy No. 44.A Healthcare Waivers

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The Executive Staff recommends to the Governance Committee the adoption of the following revised policies and procedures:

### **POLICY NO. 12.0 Termination and Severance Pay Policy**

In 2019, the State Legislature passed an Assembly Bill introduced by Assembly Member Monica P. Wallace, which was signed by the Governor in late November. The new law limits the payment of severance to three months. The policy has been revised in conformity to the new legislation.

Due to the common law term-limit doctrine, the Board of Commissioners lacks the authority to approve employment contract beyond the term of any commissioner. The old policy contained a provision allowing an employment contract to deviate from the severance provisions within the old policy. The revised policy has removed this provision.

### **POLICY NO. 46.0 Medical Coverage for Retirees**

As stated in the revised policy, the Authority endeavors to solicit, recruit, employ and retain highly qualified and experienced professionals to oversee all aspects of the Authority's operation. As a governmental entity, the Authority lacks the

power to negotiate or offer long-term employment agreements to prospective employees, except for employees who are subject to a collective bargaining agreement.

In the private sector, employers may attract executives, senior managers and other professionals by offering employment contracts setting forth terms and conditions of employment, short- and long-term benefits, the grounds upon which termination may be sought, and the terms and conditions under which severance compensation may be provided upon termination.

The Authority's executive, senior and professional staff are considered at-will employees, with many holding professional licenses. The Authority must compete with the private sector for highly qualified and experienced executives, senior manager and professionals.

The Authority first offered medical coverage for its retirees as an effort to recruit and retain highly qualified and experienced personnel. In this same vein, the Executive Staff offers a revised policy expanding eligibility for medical coverage upon retirement. The Executive Staff earnestly believe the changes would attract older, more experienced professionals who might otherwise be reluctant to change employers when retirement is on their horizon, but who are not currently being offered medical coverage upon retirement.

Under the revised policy, a full-time non-represented employee who is a member of the New York State and Local Retirement System (NYSLRS) or the optional TIAA-CREF program who, at the time of retirement, have met one of the following age and service requirements:

- (a) An eligible employee who is at least fifty-five (55) years of age and has a minimum of fifteen (15) years of full-time service with the Authority; or
- (b) An eligible employee with a minimum of five (5) years of full-time service with the Authority and whose age and years of services combined is at least equal to sixty-five (65).

Option (a) existed under the old policy. Option (b) has been modified by reducing the years of service from ten (10) to five (5) and reducing the combination of age and service from seventy (70) to sixty-five (65).

Karen A. Prendergast has analyzed the impact of these revisions on the Authority's current workforce. She concluded the revisions would only have a minimal effect. Her findings are summarized below:

- Two employees would immediately become eligible, if they chose to retire now using Option (b);
- Twelve people would be able to retire on average three-years earlier if they chose Option (b);
- Seventeen people would receive no benefit improvement largely because when they are eligible for retirement, they would receive such benefits under the current policy; and
- Thirteen employees already qualify under the existing rules, but do not meet the retirement eligibility.

Other revisions to the policy were made for purposes of clarification.

#### **POLICY NO. 44.A HEALTHCARE WAIVER**

Authority employees and retirees are eligible to receive cash payments in lieu of healthcare coverage if they file an annual waiver with the Authority. A cap on these waiver payments exists for employees and retirees, who are members of a collective bargaining unit. Policy No. 44.A currently offers waivers to non-represented employees and retirees, but does not impose a cap.

The Executive Staff recommends the policy be revised to cap payments made for notices of waivers filed on or after January 1, 2021. Such payments would be made by the Authority during the 2022 calendar year.

The revised policy would also deny payment waivers for part-time employees and for any employee who had already been retired from the NYSLRS and had been receiving Medicare benefits, when the employee was initially hired by the Authority. These provisions would go into effect on January 1, 2021 with final waiver payments to be made during the 2021 calendar year.

All revisions to the above-referenced policy have been reviewed, modified and approved by the Chief Financial Officer, the Comptroller, the Director of Human Resources, and the Employee Benefit Specialist. The General Counsel, the Secretary of the Authority, the Chief Operating Officer, the Chief Financial Officer and the Executive Engineer have reviewed and recommends the adoption of these revised policies.