



## An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

Michael R. Blum, Attorney  
248.785.4722  
mblum@fosterswift.com

Johanna M. Novak, Attorney  
906.226.5501  
jnovak@fosterswift.com

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

**FOSTERSWIFT.COM**  
Slide 1



## Disclaimer

- This presentation does not constitute legal advice. It is a summary presentation, and the presenter cannot be responsible for any errors, omissions, or changes in the material presented, nor for any administrative or adjudicative body's interpretation or application of the legal premises upon which this material is based. Advice from your attorney should be sought for any specific situation.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012  
Slide 2  
© 2012, Foster Swift Collins & Smith, PC.



## Amendments to Michigan's Public Employment Relations Act (PERA) MCL 423.201 et. seq.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

[FOSTERSWIFT.COM](http://FOSTERSWIFT.COM)  
Slide 3



## Public Act 54 of 2011

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

[FOSTERSWIFT.COM](http://FOSTERSWIFT.COM)  
Slide 4



## Public Act 54 of 2011

- Effective June 8, 2011
- Amends PERA to provide that:
  - Upon expiration of a collective bargaining agreement (CBA);
  - A public employer may not pay wages or benefits at levels greater than those in effect on the expiration date of the agreement.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 5

© 2012, Foster Swift Collins & Smith, PC.



## Public Act 54 of 2011

- Expiration date means the date set forth in the CBA without regard to any agreement of the parties to extend or honor the agreement during pending negotiations for a successor CBA.
- PA 54 is intended to foreclose union tactics intended to delay negotiations and to limit a public employer's financial exposure upon expiration of a CBA.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

June 6, 2012

Slide 6

© 2012, Foster Swift Collins & Smith, PC.



## Effect on Step Increases

- Historically, step increases have provided for automatic wage increases, based on the length of service with the public employer.
- Contractual step increases were paid to maintain the “status quo” during the pendency of the negotiations, even if the CBA had expired and no new or interim agreement was agreed upon.
- PA 54 prohibits implementation of step increases upon expiration of a CBA.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 7

© 2012, Foster Swift Collins & Smith, PC.



## Effect on Health Insurance

- Historically, a public employer was required to pay insurance premium increases during the life of negotiations for a new CBA.
- PA 54 mandates that public **employees** pay insurance premium increases for health, dental, vision, prescription or other insurance benefits to the extent the increases occur after the expiration of the agreement.
- The public employer is authorized to make payroll deductions necessary to pay the increased cost of maintaining those benefits.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

June 6, 2012

Slide 8

© 2012, Foster Swift Collins & Smith, PC.



## Prohibition on Retroactive Adjustments

- PA 54 prohibits parties to a CBA from agreeing to or an arbitration panel ordering retroactive wage or benefit levels which are greater than those in effect after the CBA expired.
- PA 54 does not prohibit “lump sum” wage increases.
- But, under PA 54, Act 312 arbitration panels will be precluded from granting retroactive wage or benefit adjustments.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 9

© 2012, Foster Swift Collins & Smith, PC.



## Publicly Funded Health Insurance Contribution Act (Public Act 152)

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

[FOSTERSWIFT.COM](http://FOSTERSWIFT.COM)

Slide 10



## Publicly Funded Health Insurance Contribution Act (Public Act 152)

- The Act limits the amount that public employers can pay towards employee medical benefit plans.
- Effective for medical plan years beginning on or after January 1, 2012.



## A Public Employer Includes:

- the State of Michigan
- a local unit of government (township, city, village, or county, etc.)
- any intergovernmental or local department, agency, or authority, or other local political subdivision
- a school district, an intermediate school district, a public school academy, a community college, junior college or other institution of higher education
- a public library, a public airport authority or a drain commission.



## What is a “Medical Benefit Plan?”

- A medical benefit plan is a plan provided by a health insurance company or by 1 or more public employers that provides for the payment of medical benefits, including but not limited to: hospital and physician services, prescription drugs, and related benefits.
- A medical benefit plan does not include benefits provided to retirees, separate plans for dental or vision insurance, or short or long term disability insurance.



## What employer-provided health benefit costs count towards the limit?

- The annual premium cost for a medical plan
- Any employer contribution into a health savings account, flexible spending account or similar account used for health care
- Any employer reimbursement to employees of co-pays or deductibles



## Choose between either the hard cap limit or the 80/20 limit.

- The hard cap limit is the default limit, but the public employer may elect the 80/20 limit instead, through a majority vote of the governing body. A new 80/20 election would be required each year.



## The Hard Cap

- A public employer that contributes to a medical benefit plan for its employees or elected public officials shall pay no more towards the annual cost of coverage than a total amount equal to:
  - \$5,500 times the number of employees with single person coverage, plus
  - \$11,000 times the number of employees with two-person coverage, plus
  - \$15,000 times the number of employees with family coverage.
- The total sum of this calculation is the employer's hard cap limit. If the actual cost of coverage exceeds this limit, the employer must allocate the overage among employees, although the employer has discretion as to how to perform this allocation.





## Hard Cap Example

- Employer has 3 employees, A, B and C. Employee A has chosen single person coverage, employee B has chosen two-person coverage, and Employee C has chosen family coverage. This means that the total amount that the employer may pay for health coverage under the hard cap option is  $(\$5,500 \times 1) + (\$11,000 \times 1) + (\$15,000 \times 1) = \$31,500$ . Any coverage must be passed on to the three employees.
- Alternatively, if all three employees chose family coverage, then the total amount that the employer could pay towards coverage would be  $\$15,000 \times 3$ , or  $\$45,000$ .



## The 80/20 Option

- The public employer may elect to pay not more than 80% of the total annual costs of all of the medical benefit plans it offers or contributes to for its employees and elected public officials.
- The employees and elected public officials would then be responsible for the remaining 20% of cost.
- The public employer is permitted to allocate the total annual costs of the medical benefit plans for employees among its employees as the employer sees fit, although each elected public official participating in the employer's medical benefit plans would be required to pay 20% or more of the total annual costs of the plan.
- To use the 80/20 option, the employer must obtain the approval of the governing body by majority vote. If such approval is not obtained, then the employer must use the hard cap limit instead of the 80/20 limit.



## Existing Collective Bargaining Agreements

- If an employer had a collective bargaining agreement in place on September 27, 2011, it should continue to comply with the terms of that CBA even if they are inconsistent with this new law. Once that CBA expires, is extended, or is renewed, then the employer must comply with this law with respect to those employees governed by the CBA.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 19

© 2012, Foster Swift Collins & Smith, PC.



## Opt Out

- A local unit of government (such as a city, village, township, county, a municipal energy utility, and a public airport authority) may opt out of this law with a 2/3 vote of its governing body.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

June 6, 2012

Slide 20

© 2012, Foster Swift Collins & Smith, PC.



## Penalties

- 10% reduction in any Economic Vitality Incentive Program payment
- 10% reduction in school aid



## Example A

- Assume that a public library employs 10 individuals, all of whom are provided with and elect health insurance coverage. Two employees choose employee only coverage, four employees choose two-person coverage, and four employees choose family coverage. Under the "hard cap" provision of the Act, the employer is permitted to pay up to \$115,000 under this scenario (2 employees x \$5,500, plus 4 employees x \$11,000, plus 4 employees x \$15,000 = \$115,000).



## Example A (continued)

- The medical benefit plan chosen by the employer costs \$6,500 for employee only coverage, \$9,000 for two-person coverage, and \$16,000 for family coverage, for a total actual cost of \$113,000 for the medical benefit plan (2 employees x \$6,500, plus 4 employees x \$9,000, plus 4 employees x \$16,000 = \$113,000). The employer was permitted to pay up to \$115,000 for coverage, but because the actual cost of coverage is less than this, none of the cost of the insurance is required pursuant to the "hard cap" provision of the Act to be passed on to the employees.



## Example A (continued)

- If the employer had elected to use the 80/20 provision of the Act (rather than the "hard cap" provision), 20% of the total cost of coverage (or, \$22,600) would have to be paid by the employees.



## Example B

- Assume that a public library employs 10 individuals, all of whom are provided with and elect health insurance coverage. The medical benefit plan chosen by the employer costs \$7,500 for employee only coverage, \$9,500 for two-person coverage, and \$17,000 for family coverage. Two employees choose employee only coverage, four employees choose two-person coverage, and four employees choose family coverage, for a total cost of \$121,000 for the medical benefit plan. Under the "hard cap" provision of the Act, the employer is still permitted to pay up to \$115,000 under this scenario (See Example A), meaning that \$6,000 of the cost of the insurance is required, by the "hard cap" provision of the Act, to be passed on to the employees (\$121,000 actual cost - \$115,000 limit).



## FAQ

### Question:

If an employer offers employees the choice between more than one benefit plan, can the employer choose to calculate the limit for one plan under the hard cap provision of the act, and the limit for the other plan under the 80/20 limit?

### Answer:

No, all benefit plans offered by the employer must be reviewed under the same limit, either the hard cap or 80/20.



## FAQ

### Question:

If an employee opts out of health insurance coverage, can that employee still be calculated into the hard cap amount?

### Answer:

No, an employee who has opted out of coverage cannot be included in the hard cap calculation.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012  
Slide 27  
© 2012, Foster Swift Collins & Smith, PC.



## FAQ

### Question:

Can an employer switch from the hard cap default calculation to the 80/20 calculation in the middle of a coverage year?

### Answer:

No, any election to use the 80/20 option instead of the hard cap option must be made prior to the start of the coverage year.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012  
Slide 28  
© 2012, Foster Swift Collins & Smith, PC.



## FAQ

### Question:

May a public employer impose the hard cap or 80/20 requirements against a group of employees that are covered by a collective bargaining agreement before the date in which the agreement expires, is extended, or is renewed?

### Answer:

No, if the imposition of these requirements would conflict with the terms of the CBA currently in place.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012  
Slide 29

© 2012, Foster Swift Collins & Smith, PC.



## Municipal Partnership Act

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

**FOSTERSWIFT.COM**  
Slide 30



## Municipal Partnership Act

- Effective December 14, 2011
- Amends PERA to:
- Allow two or more local governments
  - Local government means county, city, village, or township.
- Or one or more local governments and a public agency
  - A single purpose or multi-purpose public body corporate formed under a law other than the new act, or an Indian tribe recognized by the federal government before 2000.
  - Does not include the state, or a department or agency of the state.
- To enter into a contract to:
  - Perform or exercise any function, service, power or privilege;
  - That the local government or public agency could exercise separately.



## Joint Endeavor

- New joint endeavor can use tax revenue that was previously dedicated to pay for the exercise or performance of any function, service, power or privilege that local government or public agency individually, to fund the exercise or performance of that function, service, power or privilege by the joint endeavor.
- Joint endeavor may also levy a tax up to five mills on all taxable property in the areas it served for the purposes of providing revenue to the joint endeavor, but only if approved by a majority of electors served by the endeavor.





## Prohibited Subjects of Bargaining

- Municipal Partnership Act makes as a prohibited subject of bargaining between a local government or public agency and the bargaining representative of its employees, the follow:
  - Whether the local government would enter into a contract for a joint endeavor;
  - The procedures for obtaining the contract for a joint endeavor;
  - The identities of the other parties to the contract;
  - The contents or language of the contract; and
  - The impact of the contract on individual employees or the bargaining unit.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 33

© 2012, Foster Swift Collins & Smith, PC.



## Permissive Subject of Bargaining

- If:
  - the local government and a bargaining representative engaged in bargaining before the contract for a joint endeavor was approved; and
  - the parties reached an agreement on issues that would obligate an entity that would function as an employer in the joint endeavor:
- The contract for the joint endeavor would have to include those obligations.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

June 6, 2012

Slide 34

© 2012, Foster Swift Collins & Smith, PC.



## Effects Bargaining

- The new act does not relieve a local government from the duty to collectively bargain over the effect of the joint endeavor on its employees.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 35

© 2012, Foster Swift Collins & Smith, PC.



## Public Act 116 of 2011

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

[FOSTERSWIFT.COM](http://FOSTERSWIFT.COM)

Slide 36



## Public Act 116 of 2011

- Effective July 20, 2011
- Amends to Public Act 312 of 1969, which provides for arbitration of labor disputes involving municipal police, fire and emergency medical service personnel.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities  
June 6, 2012

Slide 37

© 2012, Foster Swift Collins & Smith, PC.



## As amended, PA 312:

- Requires an arbitration panel to give priority to the financial ability to pay.
- Allows an arbitration panel to compare wages, hours, and conditions of employment of employees of a unit of government outside the bargaining unit in question.
- Expands coverage to include authorities created by local units.
- Sets limits on the extension of deadlines during the arbitration process.
- Requires MERC to establish qualifications for individuals to chair an arbitration panel.
- Shifts the State share of arbitration costs to the employer and union.

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

An Update on the 2011 Labor Law Changes and the Impact on Michigan Municipalities

June 6, 2012

Slide 38

© 2012, Foster Swift Collins & Smith, PC.



## Questions?

Michael R. Blum, Attorney  
248.785.4722  
mblum@fosterswift.com

Johanna M. Novak, Attorney  
906.226.5501  
jnovak@fosterswift.com

**FOSTER SWIFT**  
FOSTER SWIFT COLLINS & SMITH PC || ATTORNEYS

**FOSTERSWIFT.COM**  
Slide 39