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Governments must keep contract promises

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Last Monday's ruling by the state Supreme Court against Orange County's attempt to exclude retired workers from the county's health insurance risk pool reveals that the county was attempting to do something that may have been both unconstitutional and unwise. The Court held counties are bound by their pay and benefits

promises to their employees and thus cannot reduce budget deficits by renegeing on contracts. The decision is a reminder that health insurance costs cannot be contained by breaching contracts and eliminating older or ailing employees from risk pools.

The case arose when Orange County unilaterally changed the way it pools employees for purposes of setting health insurance premiums. Effective 2008, the county divided its active employees and retirees into two separate risk pools, with the result that retired employees (who are more expensive to insure) pay higher health insurance premiums. This alleged breach of contract shifted \$10 million in costs to retirees.

The Supreme Court unanimously rejected the county's argument that it could not enter into a binding agreement with its employees unless every contract term was in writing and that, because the risk pool for insurance purposes was not written down, the county could abandon its decades-long practice. The case will now go back to the trial court to give the retirees the chance to prove that the county made a binding promise.

The decision reminds us that governments cannot solve their budget problems by repudiating contracts with their employees. This is not about government cutting overly generous retiree benefits. Studies show that government employees earn, on average, the same as or less than their similarly situated counterparts in the private sector. Government employees bargain for health insurance and retirement benefits in exchange for lower wages than in the private sector.

When financial institutions faced huge losses in 2009, they were not allowed to walk away from their contracts with their executives, because the rule of law in a capitalist economy requires that contracts be enforceable even when they prove to be expensive. The same principle applies to state and local governments' contracts with retired secretaries and janitors. As tempting as it is for politicians to reduce budget deficits by repudiating contracts, the law does not allow it. The U.S. Constitution prohibits government from "impairing the obligations of contracts." As the U.S. Supreme Court said 35 years ago when New Jersey wanted to walk away from a contract that it had signed as part of a bond deal, if states could reduce their financial obligations by breaching contracts whenever it seemed more expedient than raising taxes, the constitutional protection for contracts "would provide no protection at all."

Intellectual Property

Federal appeals court orders rare venue switch

At the request of a Santa Clara technology company facing a patent infringement suit, a federal appeals court on Friday ordered the case out of Delaware federal court and into the Northern District of California.

Litigation

Courtrooms grow quieter, as court reporters chopped

The reduction in the number of civil court reporters in counties such as Los Angeles, San Francisco and San Luis Obispo has raised concern about litigants' access to justice and ability to appeal court rulings.

Discipline

Disciplinary Actions

Here are summaries of lawyer disciplinary actions taken recently by the state Supreme Court or the Bar Court, listing attorney by name, age, city of residence and date of the court's action.

Large Firms

Legal industry hiring stays sluggish

Jb growth in the legal industry remained sluggish as only 100 jobs were added nationwide last month.

Firm Watch

On the Move

O'Melveny & Myers LLP added Mark Peterson as partner in Newport Beach. He focuses on mergers and acquisitions and corporate law matters. Peterson joins the firm from Conexant Systems, a semiconductor provider, where he was general counsel.

Litigation

PR guru agrees to settle retirement fund suit

A prominent public relations guru and several co-defendants have agreed to a \$6.25 million cash payment to settle a federal lawsuit in which two former employees' alleged they were swindled out of the bulk of their retirement fund.

Rulings stymie iPhone user suits

A San Francisco federal judge issued two rulings last week that stymied a pair of consumer lawsuits against Apple Inc. and AT&T Mobility LLC and further stacked the cards against unhappy iPhone

The decision reminds us that governments cannot solve their budget problems by repudiating contracts with their employees.

This decision also shows that Orange County went about controlling its health insurance costs in exactly the wrong way, by attempting to separate those who are more expensive to insure from everyone else. For health insurance to remain affordable to everyone, especially older people or people with catastrophic illnesses or injuries, the risk pool on which the insurance premiums are based must remain diverse. Insurance is all about spreading risk. Healthy people subsidize health insurance for the unhealthy; experienced drivers subsidize auto insurance for younger drivers.

It is understandable, but entirely wrong, that Orange County wanted to reduce the cost of insuring its active employees (whose premiums are paid in part by the county) by eliminating its retired employees - who pay most of their own premiums - from the risk pool. The exclusion of retirees creates a spiral of ever-increasing premiums that will make health care increasingly unaffordable as the healthier among them will opt out of the insurance plan, making those who remain ever more expensive to insure.

The reason why Orange County reneged on its promise to its retirees is the reason why we need the mandate of the Affordable Care Act that every person have health insurance. Younger, healthier people tend not to purchase health insurance because they think it is cheaper for them to pay their health care costs out of pocket. They gamble that they won't suffer a hugely expensive injury. If they lose the gamble, their family, the hospital, or Medi-Cal eventually assumes whatever costs they cannot pay. The health care costs of elderly or ailing people do not go away when employers eliminate them from their risk pool. For health insurance to remain available to the young and the old, the healthy and the infirm, we all need to be in the risk pool.

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consumers.

Law Practice

DOJ approves Google acquisition of AdMeld

The United States Department of Justice gave the green light to Google Inc. for its \$400 million planned acquisition of New York-based AdMeld Inc. announced in June.

Construction

Dirt set to turn on San Bernardino courthouses

A pair of Inland Empire justice centers are among several long-awaited courthouse projects jumpstarted by the state's sale of hundreds of millions of dollars in bond financing.

Energy Law

SolarCity secures financing without government loan guarantee

In what is being touted as the largest-ever residential solar project, SolarCity has finalized a critical financing agreement - even after failing to obtain a Department of Energy loan guarantee.

Law Practice

Salaries spike for UC in house counsel

Chief counsel at six University of California campuses have received approval for salary hikes ranging between 6 and 21 percent more than their current rate of pay.

Reflecting on the past: myth or reality?

Can the past offer useful lessons for the present - or is it all tainted by nostalgia? By **Arthur Gilbert** of the 2nd District Court of Appeal

Government Contracts

Governments must keep contract promises

Governments cannot solve their budget problems by repudiating contracts with their employees. By **Catherine Fisk** of UC Irvine, School of Law

Pandora's Box opened: Retired county employees may have implied contractual rights

The state Supreme Court provides employees and retirees with a new way to sue local public agencies. By **Judith S. Islas** of Liebert Cassidy Whitmore

Labor/Employment

New fines for misclassifying independent contractors

A new law, set to take effect Jan. 1, 2012, dramatically increases the stakes. By **Robert W. Wood** of Wood LLP

Appellate Practice