

## CLIENT ALERT

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### **Pension Trustee Training Post-Consolidation: The New Requirements**

**By James G. Wargo**

Since August of 2009, Article 3 and 4 pension trustees have been required to complete certain training and education requirements under Sections 1-109.3 and 1-113.18 of the Illinois Pension Code (40 ILCS 5/1-109.3; 1-113.18). Following the Illinois General Assembly's passage of Public Act 101-0610 (effective January 1, 2020), the training requirements for Article 3 and 4 pension trustees changed significantly. The following questions and answers cover the details of the new requirements, including insight into the Illinois Department of Insurance's oversight of the training.

#### **How much initial training must pension fund trustees complete?**

As of January 1, 2020, each newly elected and appointed Article 3 and 4 pension trustee must complete a mandatory trustee certification training seminar that consists of at least 16 hours of instruction at a training facility that is accredited and affiliated with a State of Illinois certified college or university within the first year that a trustee is elected or appointed under Section 1-109.3 (a) of the Code.

Note that any pension trustee who was serving in that capacity prior to August 13, 2009 (the original effective date of Section 1-109.3 of the Code) is exempt from this 16-hour trustee certification training. Although Section 1-109.3 is silent as to whether a trustee who stopped serving for a period of time and was subsequently reappointed and/or re-elected to a pension board would be required to take the initial training course, the Illinois Department of Insurance has informally opined that such trustee would not be required to take the initial training course. However, the DOI further stated it would be best practices for a re-elected or re-appointed trustee to take the course.

### **How much annual training must pension fund trustees complete?**

As of January 1, 2020, each Article 3 and 4 pension trustee must participate in a minimum of 8 hours of continuing trustee education each year after the first year he or she is elected or appointed to the pension board under Section 1-109.3(b) of the Code.

Under Section 1-113.18 of the Code (which was not amended by Public Act 101-0610), each Article 3 and 4 pension trustee is also required to complete at least 8 hours of training in ethics, fiduciary duty, investment issues, and other curriculum that the respective pension fund board deems important under Section 1-113.18 of the Code. Fortunately, the 8 hours of training under Section 1-113.18 have been interpreted to be concurrent with the broader training required under Section 1-109.3 of the Code. In other words, courses taken to complete with trustee certification training and/or annual training may be applied to satisfy the training requirements under Section 1-113.18 so long as such course work involves ethics, fiduciary duty, investment issues, or other curriculum the respective pension fund board establishes as being important.

### **Who is required to complete the four hours of pension consolidation training?**

All Article 3 and 4 pension trustees who were elected or appointed on or before January 1, 2020 are required to complete 4 hours of training on the changes made by the pension consolidation bill adopted under Public Act 101-0610 pursuant to Section 1-109.3(a-5) of the Code. This training is only required to be completed once. For Article 3 trustees, this training must be conducted at a training facility that is accredited or affiliated with a State of Illinois certified college or university. For Article 4 trustees, this training may be conducted by a pension fund or the Illinois Department of Insurance. The statute is silent as to when this additional four hours of training must be completed, but it is recommended that it be completed prior to the transition of the pension fund assets to the Police Officers' Pension Investment Fund or Firefighters' Pension Investment Fund, which is statutorily required to occur no later than July 1, 2022.

### **What topics must be included in pension fund trustee training?**

The pension trustee training under Sections 1-109.3 and 1-113.18 of the Code may cover a variety of topics. Section 1-109.3 provides a non-exhaustive list of subjects, while Section 1-113.18 provides a more narrow list of subjects. As of January 1, 2020, the initial 16-hour trustee certification training under Section 1-109.3(a) must include, without limitation, the following:

- Duties and liabilities of a fiduciary with respect to the administration and payment of pension benefits
- Adjudication of pension claims
- Trustee ethics
- Open Meetings Act
- Freedom of Information Act

Notably, as of January 1, 2020, any trustee who has completed training under Section 1.05 of the Open Meetings Act (5 ILCS 120/1.05) shall not be required participate in training concerning the Open Meetings Act.

Section 1-109.3(b) of the Code does not specify any particular course or topic that must be completed to satisfy the annual training requirements under this provision. However, the training required under Section 1-113.18 of the Code must include the following subjects:

- Ethics
  - Fiduciary duty
  - Investment issues
  - Any curriculum deemed important by the respective pension fund board
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Thus, this annual training may include a myriad of topics, as long as such topics are reasonably related to the operation and oversight of a public pension fund.

### **How can pension fund trustees obtain their required annual training?**

Training courses are sponsored throughout the year by various statewide pension organizations, fire and police service organizations, municipal organizations, and unions. The DOI does not pre-approve and/or certify any particular course for annual training purposes. Pension boards may even devote time at each board meeting to training which any professional advisor -- your investment advisor, accountant, auditor, attorney, or other knowledgeable person -- can provide.

However, be forewarned that time spent on self-directed or independent study by pension trustees will not be counted by the DOI to satisfy the annual training requirements under the Code. The DOI will decline to accept training claimed by pension trustees during an audit of the fund's records (such as reviewing articles or handouts). Therefore, care should be taken in selecting appropriate training.

Pension boards may want to consider coordinating periodic training provided by outside speakers with other pension boards or search for free on-line options, such as through organizations like the National Conference on Public Employee Retirement Systems (NCPERS).

### **Who pays for the required training?**

Section 1-109.3(c) of the Code specifically provides that the training required shall be paid for by the pension fund. By board policy, trustees may seek reimbursement for training expenses from the pension board. Prior to reimbursing trustees for training expenses, however, a pension board should have in place a policy governing reimbursement of these expenses. This policy should detail the process for approving training costs, obtaining reimbursement, and specifically identify those expenses eligible for reimbursement. Furthermore, the DOI monitors the reasonableness of training costs, as well as the necessity of the training, through the DOI Annual Statement interrogatories.

### **When must the annual training be completed?**

The required annual pension trustee training under Sections 1-109.3 and 1-113.18 of the Code must be completed within the 12-month period from the time the trustee is elected or appointed after the first year in office. Note, however, for pension trustees who were serving on or before January 1, 2020, the training year period was reset to a calendar year period from January 1 through December 31. Upon any subsequent reappointment or re-election of such trustee, the training year period will align with the 12-month period beginning at the commencement of the trustee's subsequent term of office.

Beyond this training year period, each pension trustee is given an additional six-month grace period to complete the required training. As such, each pension trustee is given a total of 18 months to complete the required certification and annual training under the Code. Note that use of this six-month grace period will not excuse a pension trustee's compliance with the current year's training requirements.

### **Are there any consequences to failing to obtain the required training?**

Any pension trustee who fails to obtain the required certification training and/or annual training within six months of the year in which it is to be completed will be ineligible to serve on his or her respective pension board. However, the pension fund board must affirmatively vote to remove such ineligible pension trustee. If the pension trustee comes into compliance with his or her training requirements prior to the vote to remove him or her, the pension board may not proceed with the threatened removal. Section 1-109.3(d) of the Code calls for the replacement of an ineligible board member by appointment or election in the same manner board members are normally chosen to serve.

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### **Can members of a pension board receive paid time off to attend trustee training?**

Yes. Section 1-109.3(a) of the Code provides that elected and appointed pension trustees who work for the municipality or fire protection district in any capacity must be given time off without a reduction of accrued leave time to attend the initial 16-hour mandatory training. However, the same benefit is not required for the completion of any subsequent annual training.

### **Who is responsible for maintaining training records?**

Each pension board will be responsible for maintaining board members' training records throughout the year. Under Section 1-113.18 of the Code, boards must annually certify to the DOI that trustees have completed their required training. Pension boards should consider maintaining separate files for each board member that include proof of attendance at training. For training or education that does not result in a certificate, trustees will need to provide their own documentation for certification by the pension board. Note that the DOI now requires submission of training certifications annually with the DOI Annual Statement, and thus, documentation of all trustee training is imperative.

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