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## **PUBLIC PENSIONS - WASHINGTON**

### [Wilson v. Washington State Department of Retirement Systems](#)

**Court of Appeals of Washington, Division 1 - November 2, 2020 - P.3d - 2020 WL 6389986**

Retired city police officer sought judicial review of Department of Retirement Systems decision to deny him retirement benefits because, after leaving the police force, he took a new job as chief of staff for the city mayor.

The Superior Court reversed, and Department appealed.

The Court of Appeals held that:

- Retired officer could assert equitable estoppel as a defense;
- Department was equitably estopped from denying retired city police officer his pension benefits; and
- Officer was entitled to attorney's fees under the Equal Access to Justice Act (EAJA).

Retired city police officer could assert equitable estoppel as a defense to Department of Retirement System's defense of not paying him his pension because of his alleged breach in taking job as chief of staff for mayor; retired officer was due his pension and had, in essence, a contractual right to his pension benefits, and to contest the Department's denial of his pension, his only remedy was to appeal the decision.

Department of Retirement Systems was equitably estopped from denying retired city police officer his pension benefits on grounds he accepted job as city mayor's chief of staff; Department publications uniformly explained that an employee could return to work in the public sector and maintain their benefits by opting out of any other retirement program, city called and confirmed that information before hiring officer, officer relied on that information by resigning his law enforcement commission, terminating his employment as chief of police, and filling out the Department's form for returning to work, and retroactive application of Department's new requirement that a retiree have no reasonable expectation of continuing employment with the employer at the time of separation would be manifestly unjust to retired officer.

Department of Retirement System's application of its new interpretation of "separated from service," which provided that, to obtain pension benefits, a retiree have no reasonable expectation of continuing employment with the employer at the time of separation, to retired city police officer who took job as city mayor's chief of staff was not substantially justified, and thus officer was entitled to attorney's fees under the Equal Access to Justice Act (EAJA); Department's website, publications, training, and oral representations confirmed the department's historical interpretation of "separation of service" before officer retired, and there was no notice of any change of interpretation before it was applied to officer.

