

Legal Basics: Pensions

Emily Spreiser, Legal Program Director

Pension Rights Center

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Slides and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

In Today's Presentation

- About the Pension Rights Center
- How do Retirement Plans Work and What Does the Law Say?
- Common Problems and Current Issues
- Referrals and Resources



PENSION RIGHTS
CENTER

About the Pension Rights Center

- National nonprofit organization that promotes retirement security for American workers, retirees and their families
- Two focus areas: public policy and legal assistance
- Legal Program
 - Support to Pension Counseling and Information Program
 - Direct Assistance
 - Technical Assistance and Training

How do Retirement Plans Work and What does the Law Say?

What is an Employee Benefit Plan?

- A system set up by an *employer* to provide some kind of non-salary benefit for its employees (welfare/health, disability, retirement, other)
- Identifiable benefit
- Funding mechanism
- Class of beneficiaries
- Procedure (Rules / Plan Document)

Why Retirement Plans?

- Essential to economic security in old age
- Significant part of an employee's compensation package
- Technical field of the law
- People forget about it

Who is your client?

- Participant – the worker who earned the benefit
- Beneficiary – the participant's current or surviving spouse
- Alternate Payee – the participant's former spouse (separated or divorced)

Types of Retirement Plans

- Plan sponsors
 - “Single Employer”
 - “Multiemployer” (union + multiple employers)
 - Government
 - Church
- Plan structures
 - Defined Benefit (pension)
 - Defined Contribution (401(k), 403(b), etc.)
 - Weird Plans (ESOPs, hybrids, etc.)

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Employee Retirement Income Security (ERISA)

- Title 1 - Disclosure, procedure, fiduciary duty
 - Single Employer & multiemployer plans only (private)
 - EBSA (Employee Benefits Security Administration)
- Title 2 - Amends Internal Revenue Code
 - Tax qualification provisions (substantive)
 - ERISA plans AND some provisions apply to government plans
 - IRS

Employee Retirement Income Security (ERISA)

- Title 4 - Insurance Program
 - ERISA (private) Defined Benefit Plans only
 - Pension Benefit Guaranty Corporation (PBGC)

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 - Weird Plans (ESOPs, hybrids, non-qualified plans etc.)

Differences: DB vs DC plans

1. Calculation method
2. Asset pool vs. Individual Account
3. Funding
4. Investment risk
5. Insurance (PBGC)
6. Payout
7. Spousal protections (QJSA)

The Shift from DB to DC

- DB is better at preparing Americans for retirement
- DC is cheaper for employers
- Big issue: people are living longer
- Multiemployer plans are DBs
- Plan freezes, “De-risking,” and lump sum distributions

Did the Client Earn a Benefit?

- Coverage
- Participation
- Vesting
- Accrual
- Retirement
 - Last hour of service
 - Benefit election
 - Distribution

Tips for Assisting Clients

- Step 1: Always Obtain Documents
 - Plan Document, SPD, Benefit Statements
 - External documents (pay stubs, tax records)
- Know the Players
 - Plan Administrator, TPA, Fiduciaries
 - Employer, HR Department, Ministerial Employees
- Know what the Plan cares about
 - Fiduciary Duty
 - Tax qualification

Common Problems and Current Issues

Lost Plans

- Participant leaves before retirement, then can't find the plan/employer when it's time to collect a benefit
- Results from bankruptcies/shutdowns, employer moves, mergers and acquisitions, and bad overall employer practices
- Role of Social Security notices
- How can you help?

Recoupment of Overpayments

- Plans mistakenly overpay benefits all the time
- Plans often believe they are legally obligated to recover the overpaid amount from the participant
- Significant reductions to future monthly benefit payments that cause serious financial harm in many cases
- Threats to sue, send to collections
- Many arguments against!!!

Spousal Issues

- Most common issues we hear about from beneficiaries and alternate payees:
 - My spouse died and all benefit payments have stopped
 - Can I get a share of my former spouse's retirement benefit?
 - Spouse died, plan never notified.
 - This leads to overpayment to spouse, plan seeking to recoup

Church Plans

Issues stemming from church plan exemption to ERISA:

- What does this mean for participants?
- What about church-affiliated organizations?
- Subject of significant current litigation

Multiemployer Pension Reform Act

- Benefit cuts historically unacceptable
- Situation of multiemployer plans now
- Substantive changes enacted 2014
 - Allows steep cuts to benefits to retirees already in pay status
 - Plan must be severely underfunded and at risk of failure in next 20 years
 - Some protections for retirees 75 and up
 - Trustees must apply to Treasury Dept
 - Unanswered questions

Pension Advances

- Lump sum payment now in return for future monthly benefit payments
- Predatory because of bad math
- Might make sense if you're sick and there's no survivor annuity

Referrals and Resources

Where to Refer Clients

- EBSA Benefits Advisors: (866) 444-3272
- PBGC Participant and Plan Sponsor Advocate: (202) 326-4448
- PRC: (202) 296-3776
 - Pension Counseling and Information Program
 - National Pension Lawyers network
 - PensionHelp.org

Get Help with Case Work

Contact Emily / Pension Rights Center

espreiser@pensionrights.org

- Technical assistance
- Training
- Resource information
- But please do *not* refer individual clients

Questions?