

Benefits and Employment Briefing



“Knowledge is a process of piling up facts; wisdom lies in their simplification.”

—Martin Fischer

A quarterly newsletter about employee benefits and current issues

Fourth Quarter 2009



RETIREES PREVAIL IN CLAIM FOR VESTED HEALTH BENEFITS

Unlike pension benefits, ERISA does not ordinarily require any vesting of welfare benefits. Over the years, however, many court decisions have held that an employer can create a vested right to welfare benefits by taking affirmative steps that indicate an intent to provide vested benefits. A recent decision by the Third U. S. Circuit Court of Appeals will make it easier for welfare plan participants to prevail on a claim that welfare benefits have vested.

In this area, the courts have typically started by looking to the written plan document and/or summary plan description (SPD) to determine whether an employer has made an affirmative indication of an intent to provide vested benefits. Until now, the courts have almost uniformly held that a properly worded “reservation of rights” clause in the plan documents is inconsistent with – and in most cases would defeat – a claim of vested welfare benefits. In the recent decision (*In re Unisys Corp. Retiree Medical Benefits ERISA Litigation*), the court concluded that retiree health benefits were vested and could not be changed by the employer, notwithstanding an explicit reservation of rights provision in the SPD.

The plaintiffs in the case were a group of individuals who had retired from employment with the Unisys Corporation in the late 1980's. At that time, Unisys provided free health coverage to retirees aged 65 and older under several different retiree plans. Each of the SPDs for those plans contained a “reservation of rights” clause, under which Unisys retained the right to amend or terminate the plan and the underlying benefits at any time. In 1992, after the plaintiffs had already retired, Unisys discontinued free retiree health coverage and introduced a new plan under which retirees would ultimately have to pay the full cost of coverage.

Plaintiffs brought suit, alleging that Unisys had breached its ERISA fiduciary duty to the plaintiffs because, during various retirement planning meetings, the Unisys human resources staff had (1) misrepresented to the plaintiffs that their retiree health benefits (and the cost of those benefits) were vested and would not change, and (2) failed to disclose to the plaintiffs the existence of the reservation of rights clauses.

The Third Circuit upheld the district court's decision that the plaintiffs were entitled to prospective lifetime benefits based on the terms of the retiree health plans at the time they retired. The Third Circuit specifically rejected Unisys' argument that oral

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statements about retiree health benefits could not supersede the unambiguous reservation of rights clauses in the SPDs. Instead, the court ruled that Unisys could not rely on the language in the SPDs because the SPDs would not have been provided to a retiree until after he or she had retired and enrolled in the plan.

Notably, in order to find for the plaintiffs in this case, the Third Circuit first had to conclude that Unisys' human resource staff members were acting as *fiduciaries* when they communicated with retirees concerning their health benefits. This may come as a surprise to many plan sponsors, who typically take the position that human resource staff members perform purely "ministerial functions" – necessary for plan administration within a pre-established framework of rules – and thus are not fiduciaries. Having concluded that the staff members *were* fiduciaries, the court then held that a reasonable fiduciary would have foreseen that its conduct would result in the plaintiffs making an important retirement decision based on the mistaken belief that they possessed guaranteed lifetime benefits.

The *Unisys* decision marks an unfavorable trend in the law for employers, and it emphasizes the importance of careful communication with plan participants. In response to this decision, employers should ensure that all documents, materials, and meetings regarding retiree health benefits specifically mention that the employer reserves the right to change or terminate the retiree benefits in the future. Putting such a statement in the SPD, alone, may no longer be enough. Employers should also train benefits staff regarding the importance of

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