

Take Care When Calculating Pensions

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Calculating pension benefits has always been complicated and best left to the experts. Now there is more reason than ever to take extreme care when calculating pensions and communicating the results to plan participants.

As we all know, mistakes sometimes happen due to mathematical errors or errors in underlying data. And, those mistakes may be communicated to participants. Historically, plan sponsors have been protected from claims based on such errors. The sponsor could look to the unambiguous terms of the plan and correct the benefit accordingly. However, a recent federal court case significantly weakened that protection. The ruling could result in a plan being forced to pay a pension benefit that was calculated incorrectly and is not in accordance with its terms.

In *Bloemker v. Laborers' Local 265 Pension Fund*, the U.S. Court of Appeals for the Sixth Circuit, which covers Michigan and several other Midwest states, recently ruled that "equitable estoppel" claims may now be made against a pension benefit plan. So what is equitable estoppel? Essentially, equitable estoppel allows a court to bind a party to its intentional misrepresentations when another party unknowingly relies on those misrepresentations and is injured by that reliance.

To make an equitable estoppel claim against a pension plan, the participant must show:

- The misrepresentation was in writing (e.g., a benefits statement);
- The plan did not allow for individual calculation of benefits (e.g., a defined benefit plan);
and
- Extraordinary circumstances exist that strongly favor the claim (e.g., a participant retired based on an incorrect pension benefit and could not afford to retire on a correct reduced pension benefit).

In *Bloemker*, the plan sponsor's incorrect calculations led the participant to retire early. The participant, Richard Bloemker, sued when the pension plan corrected the error and reduced his benefit. The court held that Bloemker had alleged sufficient facts to state a claim of estoppel, thereby refusing the plan sponsor's attempt to have the claim dismissed before trial. In future proceedings, Bloemker will still need to prove the alleged facts if he is to obtain the higher, but incorrect, pension amount. The important point is that Bloemker appears to say that basing your retirement on an incorrectly calculated pension benefit is the type of extraordinary circumstance that can support an equitable estoppel claim.



In some situations *Bloemker* could result in a pension plan being forced to pay an incorrectly-calculated pension benefit. Perhaps worse, *Bloemker* provides an avenue for plaintiffs' lawyers to bring claims for benefits that otherwise could be resolved more quickly and cheaply by the plan administrator.

So the cost of a mistake in calculating and communicating pension benefits just went up.

If you have questions about *Bloemker* or pension benefit claims in general, please contact a member of Warner Norcross & Judd's Employee Benefits Group.