wiegandattorneys.com

WIEGAND ATTORNEYS & COUNSELORS LAW LIBRARY

Protecting your Assets—Now and in the Future

One of the main purposes of law is to help you protect your assets, including your house, your car, and your pension. The latter is particularly important today, given that Americans are retiring earlier and earlier. The current median age for retirement is sixty-one, and many Americans are retiring earlier, in their fifties and even their forties. If you're envisioning kicking off your shoes to enjoy a well-earned rest, you need to understand what retirement benefits you have coming—and how to protect your right to them if difficulties arise. Your Lawyer can help you assess your financial security, perhaps as part of the estate planning you're doing.

This article will answer some of the big questions about pension benefits, one of the main sources of income for most retirees, and for many people the critical difference between a comfortable retirement and one plagued by financial worries. We'll look at 401 (k) plans and Social Security in future issues.

Q. Is my employer or union required to set up a pension plan?

A. No. The law does not obligate an employer to set up a pension plan. Less than half of American employees in the private sector are covered by traditional defined benefit pension plans, although many other employees are covered by employer-sponsored simplified employee pension plans and 401 (k) plans. Most pensions are governed by rules of the Employee Retirement Income Security Act (ERISA), which sets minimum standards for pension plans.

Q. Does ERISA apply to all pension Plans?

A. It covers most but not all. It does not cover pension plans for government workers, nor does it cover church employees unless their employer has elected to have ERISA apply. Moreover, ERISA does not protect workers who stopped working or retired before 1976.

Q. What is a defined-benefit pension plan?

A. A defined-benefit plan guarantees you a certain amount of benefits upon

Contact Us

Let's talk some more.

inquiry@wiegandattorneys.com

Denver

P: 303.741.6410
F: 303.741.6512

280 E. 20th Ave.
Denver, CO 80205

Breckenridge

P: 970.390.6587
F: 707.922.1047

291 Gold King Way
Breckenridge, CO 80424

retirement. For example, a defined-benefit plan might pay you a pension of 2 percent of your annual salary for each year you worked. So if you worked twenty-five years you could count on an annual payment equal to 50 percent of your average salary over your years of work.

Q. I am fifty-five years old and I want to retire now. Can I start collecting my pension at once?

A. Maybe, All pensions set a "normal" retirement age, often sixty-five. They usually set a minimum retirement age as well, perhaps fifty-five, sixty, or sixty-two. Check with your pension plan administrator. You may be able to collect benefits now, or you may have to wait until you are older. Remember that benefits are usually calculated partly on the basis of your age. The younger you are when you retire, the smaller the benefits, but presumably you will get them for a longer period. if you retire after the normal retirement age, you must begin collecting your pension no later than April 1 of the year after you turn seventy and a half.

Q. Do I get to choose how my pension will be paid to me?

A. Yes, to some extent. The most common type of payment is called the joint and survivor annuity benefit. it pays the full benefit to a married couple until one dies, then pays a fraction of the full benefit to the survivor as long as he or she lives. The fraction typically is half or two-thirds. The Retirement equity Act of 1984 requires this kind of disbursement unless the worker's spouse signs a waiver. The waiver permits payment of a higher benefit, but only as long as the retired worker lives. When he or she dies, the benefits end and the surviving spouse gets no more.

The joint and survivor annuity may allow you some options. You might be able to have benefits guaranteed for a certain number of years. For example, if the guarantee were for fifteen years, benefits would be paid as long as one of both spouses are alive. If both die before fifteen years have passed since retirement, benefits would continue to be paid to their beneficiary until the fifteenth year. Other guarantees might be for longer or shorter periods; the longer the guarantee, the lower the benefit.

There are some other kinds of pension disbursements as well. One pays a fixed amount for a fixed number of years, which means you could outlive your benefits and get nothing in your oldest years. Another pays all your benefits in a single lump sum when you retire, which could cost you a lot in income taxes.

Q. Is my right to collect my pension guarantee?

A. You always have the right to money you contributed to the pension fund. If you leave a company after only a few years, that money should be paid back to you in a lump sum. If you work for the employer long enough, you will have

Protecting your Assets—Now and in the Future

TABLE

Vesting

Your pension is said to vest when you have the right to all the benefits in your pension fund. If your pension has vested, you have a right to the benefits, even if you leave the job for any reason.

Q. When are my pension rights vested?

A. Amendments to ERISA in 1989 changed the vesting rules. Now, your pension rights must either vest completely after five years or partially after three years of service. Complete vesting after five years is called cliff vesting. If you work less than five years under cliff vesting, you are not entitled to any pension benefits, but once you hit the five-year mark you have a right to 1-percent of the benefits you have earned. Partial vesting is called graded vesting. Under this system, your rights become 20 percent vested after three years of service, 40 percent vested after four years, and so on up to 100 percent vested after seven years.

You do not get to choose which vesting method applies. The employer decides.

Q. Will my pension benefits ruse over the years of my retirement?

A. Perhaps. Your union may negotiate cost-of-living increases with your employer. Or a nonunion employer may increase benefits voluntarily. But generally your benefits are frozen at the level they were at when you retired. You will also probably be collecting Social Security benefits, however, and those benefits do rise with the cost of living.

Q. When protection does ERISA offer when my company is sold or taken over?

A. This area of law is not entirely clear. In some cases, successor liability is found and the company must continue the plan. If such liability is not found, your new employer is under no obligation to continue an existing pension plan. The new employer can go without a plan, set up a new plan, or continue the existing plan. if the new employer decides to continue the plan, however, ERISA requires that previous years of service be counted. In any event, you still have a right to all the benefits earned under the old employer. If the new employer abandons he plan, though, you will not continue to earn benefits.

Q. If I retire and begin receiving my pension, can I still work?

A. Yes. You can retire, collect your pension, and a work full- or part-time. However, if you work for the same employer that is paying your pension, you are limited to fewer than forty hours a month. Some plans do not permit you to work at all for the employer who is paying your pension.

Protecting your Assets—Now and in the Future

Q. Can my employer change an existing pension plan?

A. Yes. ERISA permits an employer to change the way in which future benefits are accumulated. However, the employer may not make changes that result in a reduction of benefits that you have already accrued. In addition, ERISA specifically prohibits plan amendments that alter vesting schedules to the detriment of employees.

Q. What if I Get sick after retiring? Will I still have health insurance?

A. Companies are not required to continue to provide health insurance after retirement. A 1985 federal law known as COBRA (Consolidated Omnibus Budget Reconciliation Act), does entitle you to continue coverage after you retire, but your employer may require you to pay the premiums. Coverage generally lasts for eighteen months after you stop working, but may be extended up to twenty-nine months if you are found eligible for Social Security disability or supplemental security income (SSI) disability benefits. You will also be eligible for Medicare at age sixty-five or possibly earlier if you qualify for disability benefits under Social Security SSI.

Table

Firing You Before Your Pension Vests

ERISA prohibits an employer from firing you or otherwise treating you unfairly in order to stop the vesting of your pension rights. However, the burden is on you to show that you were not fired for legitimate reasons but because your employer did not want to guarantee you pension.