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Legal News

Cash Balance Plans

PWC Violated ERISA by Flawed Definition Of 'Normal Retirement Age,' Court Rules

PriceWaterhouseCoopers LLP (PWC) violated the Employee Retirement Income Security Act when it defined "normal retirement age" in its cash balance plan as "five years of service," the U.S. District Court for the Southern District of New York ruled Sept. 5 (*Laurent v. PriceWaterhouseCoopers LLP,* S.D.N.Y., No. 06 Civ. 2280 (MBM), 9/5/06).

In so ruling, Judge Michael B. Mukasey said that because the plan's definition of normal retirement age was invalid, the normal retirement age under the plan became the statutory default of age 65. According to the court, ERISA requires that normal retirement age be specified as an age, not in terms of years of service.

The court thus found that three employees who left PWC prior to reaching age 65 were entitled to have their lump-sum distributions under the plan recalculated to include interest credits they would have earned between the time they left PWC and the time they will reach age 65.

The court rejected the employees' contention that because the plan allowed participants to continue accruing service and interest credits until a participant reached age 70 1/2, they were entitled to have the interest on their benefits extended until the age of 70 1/2. "ERISA and the law of the [U.S. Court of Appeals for the] Second Circuit do not require cash balance defined benefit plans to project the value of account balances beyond the time of normal retirement age if the employee has terminated his employment before he reaches normal retirement age," the court said.

In addition, the court joined with the majority of federal courts that have held cash balance plans do not discriminate against older workers.

The Employees' Claims

In July 1998, Price Waterhouse LLP and Coopers & Lybrand LLP merged to create PWC. One year later, the two companies' retirement plans were merged to form the Retirement Benefit Accumulation Plan (RBAP) for Employees of PriceWaterhouseCoopers LLP, a cash balance plan

Three former employees of PWC sued the company alleging the RBAP violated ERISA in several respects. First, the employees alleged that the RBAP violated ERISA because accrued benefits under the plan were not expressed in terms of the annuity that it would yield at normal retirement age. Specifically, the employees alleged the RBAP violated ERISA because it defined "normal retirement age" as "five years of service." According to the court, the employees alleged that because the plan's definition of normal retirement age violated ERISA, the normal retirement age under the RBAP became the statutory default of age 65 and thus the plan was required to project the balance of their hypothetical accounts forward to age 65 and then pay out the present value of that projected balance.

Second, the employees argued that the RBAP violated ERISA in that after a participant satisfied the plan's vesting standards, his or her benefit under the plan was conditioned on the distribution option chosen. In particular, the employees argued that because a participant who leaves his or her money in the RBAP after reaching normal retirement age can continue to receive interest credits until age 70 1/2, employees who received lump-sum distributions should have had their benefits projected forward to age 70 1/2.

Third, the employees charged that the RBAP violated ERISA's age discrimination rules because older employees accrued less benefits than younger employees.

Invalid Definition of 'Normal Retirement Age.'

First addressing the employees' complaint about how the plan defined "normal retirement age," the court rejected PWC's argument that because "normal retirement age" under ERISA can be any age before 65, PWC had the right to define that term as five years of service. "While defendant's argument that a normal retirement age can be any age before 65 may be true, the RBAP does not specify one consistent age as the normal retirement age. Instead, the RBAP defines the normal retirement age as five years of service, which means that each employee will be a different age at the time he reaches the normal retirement age. Such a normal retirement age is invalid under the Second Circuit's interpretation of ERISA," the court said.

According to the court, a pension plan can set a normal retirement age of less than age 65, but it must be a set age as opposed to a term of years of service.

"Because a normal retirement age cannot be defined in reference to years of service, the RBAP's proposed normal retirement age is invalid. Because the RBAP does not provide for an alternative, valid normal retirement age, the normal retirement age for purposes of the RBAP is age 65," the court said.

The court also said the RBAP's five years of service normal retirement age was invalid because it was not clearly stated in the relevant summary plan descriptions. According to the court, the employees likely were harmed by the deficient SPDs because it was reasonable for them to believe that they would continue to accrue interest credits until age 65 even if they terminated their employment before that point.

The court went on to say that because the three employees had not reached normal retirement age, the lump-sum distributions they received must include the pay and interest credits that would have been attained at age 65 as part of their accrued benefit.

The Whipsaw Calculation

Next, the court rejected PWC's argument that it was not required to conduct a "whipsaw" calculation because the RBAP did not guarantee that interest would be credited to a participant's account at a minimum rate so as to create a floor beneath which the value of the interest credits could not drop. Under a whipsaw calculation, if a plan's projection rate is higher than the statutory prescribed discount rate, the present value of the accrued benefit will exceed the participant's account balance and if the higher accrued benefit is not paid out, an impermissible forfeiture will occur, according to the court.

"The requirement that cash balance plans project the cash account balance forward to normal retirement age applies even when the plan does not have a guaranteed minimum interest rate," the court said. "Allowing a pension plan to avoid the required whipsaw calculation by providing its participants with a less secure benefits package conflicts with ERISA's purpose to guarantee that employees receive the pension benefits they were promised," the court added.

However, the court rejected the employees' claim that because the RBAP promised to continue providing interest credits until a participant reached 70 1/2, they were entitled for the purposes of the whipsaw calculation to have their interest credits projected to age 70 1/2 instead of to age 65. According to the court, whipsaw calculations are required to project only up to, but not beyond, the normal retirement age. "Here, the benefit commencing at normal retirement age does not include interest credits that could be earned, at the participant's option, between ages 65 and 70 1/2," the court said.

No Age Discrimination

The court went on to reject the employees' assertion that the RBAP violated ERISA's age discrimination rules. Siding with the majority of courts that have ruled on the issue, including the U.S. Court of Appeals for the Seventh Circuit, the district court said the "effect of a younger employee's pay credits being worth more than those paid to older workers is caused not by discrimination but by the time value of money."

In addition, the court said that ERISA's anti-discrimination provision does not apply to employees who have not yet reached normal retirement age. "I agree with the majority view that the legislative history and statutory language of ERISA provide strong evidence that the age discrimination provision was not intended to protect employees until after they reach normal retirement age," the court said. The court added that even if ERISA's age discrimination provision does apply to all participants, regardless of age, when the provision is properly applied to cash balance plans the rate of benefit accrual under such plans is not age dependent.

The employees were represented by Eli Gottesdiener of Gottesdiener Law Firm, Brooklyn, N.Y. PWC was represented by Robert J. Kopeky of Kirkland & Ellis, Chicago, and Mark W. Rasmussen of Kirkland & Ellis, New York.

The full text of the opinion can be found at http://pub.bna.com/pbd/06civ2280.pdf.

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