Pension Plan Fix-It Handbook

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ERISA at 40: Does Historic Overhaul Of Benefits Remain Relevant Today?

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The Pension Reform Act of 1974 (Pub. L. 93-406) was signed into law at 11:38 a.m. on Sept, 2, 1974. ERISA, as the Employee Retirement Income Security Act of 1974 is fondly known, was the most far-reaching overhaul of benefit rules in U.S. history. But is it relevant 40 years later?

For a taste of retirement plan philosophy at the time of the Act's debut, let's review ERISA's Title I, Act. Sec. 2(a), which includes these seminal ideas:

> The Congress finds that the growth in size, scope and numbers of employee benefit plans in recent years has been rapid and substantial; that the operational scope and economic impact of such plans is increasingly interstate; that the continued well being and security of millions of employees and their dependents are directly affected by these plans; … that despite the enormous growth in such plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans; … that owing to the inadequacy of current minimum standards, the soundness and stability of plans with respect to adequate funds to pay promised benefits may be endangered; that owing to the termination of plans before requisite funds have been accumulated, employees and their beneficiaries have been deprived of anticipated benefits; and that it is therefore desirable in the interests of employees and their beneficiaries for the protection of the revenue of the United States, and to provide for the free flow of commerce, that minimum standard be provided assuring the equitable character of such plans and their financial soundness.

If you joined the employee benefits world 20 years ago or fewer, you might be scratching your head right now and saying, traditional defined benefits are becoming as extinct as dinosaurs. It seems like there is a statutory change every year — and in some cases the new one changes what was just changed in the previous year! Today, the only retirement benefit I am going to have is what I provide for myself through my company's 401(k) plan.

We could easily wonder if ERISA has achieved what it set out to. (See related August 2014 column.)

Back to the Beginning

For many ERISA veterans, one cannot say ERISA without thinking Studebaker. In 1963, the Studebaker-Packard Corp.[1] shut down an auto plant in Indiana. The plan did not have enough assets to pay benefits for many employees. Lots of workers were left with a fraction of their accrued benefits, or nothing at all. Plans in those days could be drafted such that benefits were payable only upon retirement. If an employee left the company or lost his job, chances are he lost his pension; vesting schedules required many years of service.

The years between the Studebaker shutdown and the signing of ERISA were marked by efforts to bring pension plan funding to the attention of the public and legislators. A bill was introduced in the 1960s regarding termination insurance for closing plans. The unions were actively involved in lobbying efforts. Studebaker became a focal point[2] for pension reform, which led to ERISA's enactment.

See *Andersen*, p. 2

[1] http://papers.ssrn.com/sol3/papers.cfm?abstract_id=290812

[2] ibid.

Andersen (continued from p. 1)

ERISA's Strengths

Let us pause and think about ERISA and where we would be without it.

As companies have gone out of business over the years, workers could have found themselves in the same tough spot as the Studebaker employees 50 years ago: long-service employees with little or nothing to show at retirement. We can thank the ERISA vesting provisions and the U.S. Pension Benefit Guaranty Corp., which was created by ERISA, for lessening those worries.

Our employment history has changed. Given the shorter duration of employment that's become common, many employees would have left a company without any kind of retirement benefit. We can thank ERISA's eligibility and vesting provisions for providing portability to accrued vested benefits.

Due to the employer reporting requirements for terminated vested participants on the Form 8955-SSA, we can be reasonably assured that we will be reminded of our cumulative benefits from past employers when we apply for Social Security benefits.

As a result of ERISA's disclosure requirements, we know that if we tell our past employers of address changes, we will receive periodic benefit statements.

Because of ERISA's funding requirements for plans, we can be somewhat assured that someone is watching to make sure that there will be enough money for us when we retire. If there is a hint of trouble in the pension's level of funding, we will be notified via the funding disclosure requirement.

We are required to receive summary plan descriptions, and if we actually read ours, we know what our plan provides. If we don't understand, we know where to get more information.

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Most of our large retirement plans must be audited by an independent qualified public accountant, and we can read the reports attached to the readily available Form 5500 on the U.S. Department of Labor website.

Nondiscrimination rules are designed to ensure that all employees get a fair share of their retirement plan. Plan sponsors are required to understand what they are paying for with service providers to DC plans and to tell plan participants.

Last and probably most important, ERISA's fiduciary standards ensure that plan sponsors act in the best interest of plan participants.

The Tides of Change

ERISA helped the retirement plan industry evolve, but we have experienced great change since its enactment. Our demographics have shifted; our work environment has evolved from manufacturing to service-oriented businesses; our economy has suffered ups and downs; and business has truly gone global. Events in other countries affect the U.S. economy more than ever.

Market volatility is unsettling and affects pensions' funded status.

Employers with defined benefit plans are taking steps to "derisk" them by selling pension obligations to insurance companies or offering lump-sum distributions, or at least are exploring these concepts.

Traditional DB plans are becoming the exception rather than the norm, and are primarily found now in the public sector, where funding concerns about them are often covered in the national press. Defined contribution plans have emerged as the predominant retirement plan for most workers.

Did ERISA Cause Shift Away from DB Plans?

Did employers shift from traditional DB plans to DC plans because they could, or because they believed the increasingly complex regulatory and economic environment introduced by ERISA made it impossible to sustain the expenses of a pension plan?

Did ERISA provisions enable employers to adapt to shifting employee demographics by adopting a 401(k) plan that would be accepted by employees and help stabilize employer costs?

ERISA has been amended[3] many times. Whether in anticipation of a trend (manufacturing plant shutdowns), in reaction to perceived financial trouble (underfunded

See _Andersen_, p. 3

[3] http://www.aon.com/attachments/human-capital-consulting/list-of-major-post-erisa-legislation_041614.pdf

Andersen (continued from p. 2)

DB plans) or as a way to raise government revenue can and will be debated forever.

Employers and the retirement plan industry have adapted to the changes. For example, cash balance plans, which define the promised benefit in terms of a stated account balance more like a DC plan, have replaced many traditional DB plans.

Increased participant education has made employees aware that if they start saving with their first paycheck and continue to do so throughout their working lives, they could have as much as or more in terms of retirement income than those who are covered by traditional DB plans.

ERISA has served its purpose, even if it leads benefits professionals and practitioners to shake their heads over the Act's complexity at times.

As a result, ERISA has protected millions of employees' right to enjoy the fruits of their retirement plans. ❖

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