

In Brief

U.S. Department of Labor

Employee Benefits Security Administration



Can the Retiree Health Benefits Provided By Your Employer Be Cut?

Background

Providing for health care is an important part of retirement. Some employees are fortunate: they belong to employer-provided health care plans that carry over to retirement.

However an important question arises for employees and retirees: How secure are my health care benefits after retirement? Under

what circumstances can the company reduce or terminate my health benefits?

Employees and retirees should know that private-sector employers are not required to promise retiree health benefits. Furthermore, when employers do offer retiree health benefits, nothing in federal law prevents them from cutting or

eliminating those benefits--unless they have made a specific promise to maintain the benefits.

The key to understanding your retiree health benefits lies in the documents governing your plan.

Review Your Plan Documents

To understand the terms of employer-provided retiree health benefits, you should first review your plan documents.

The Summary Plan Description (SPD) is a summary of the terms of the plan. Employers are required to provide a copy to you within 90 days

after you become a participant in the plan.

For retirees, the SPD that was in effect when you retired may be the controlling document. **You should save a copy of it.** You also should save any SPD changes affecting your benefits after you retire.

In addition, there may be formal written documents that outline how your health plan is operated. These may include a collective bargaining agreement or an insurance contract.

You Should Know - Coverage Can Change

If your employer has reserved the right in the SPD or controlling plan document to change the terms of the plan, you may lose coverage at any time during your retirement. If

your employer made a clear promise that you will have specific health care benefits for a definite period of time or for life, and did not reserve the right to change the plan in any

formal written plan document, you should be covered.

What to Look for in Plan Documents

Check all your plan documents with the following questions in mind:

- Do the SPD or other plan documents promise that health benefits after retirement will continue at a specified level for a certain period of time?

If there is no specific language describing retiree health benefits in your plan documents, it is unlikely that you have guaranteed coverage.

- If there is such language, how specific is it?

Sometimes language covering retiree health benefits is included in the documents, but it is too vague to stand up to a test in the courts. Conversely, there is language on

employee health benefits that has held up in court. Here is an example:

“Basic health care coverage will be provided at the company’s expense for your lifetime.”

- Even if a specific promise is made, is there also language that gives your former employer the right to change or terminate that specific promise or to amend or terminate the entire plan?

Typical language giving the employer that right might read:

“The company reserves the right to modify, revoke, suspend, terminate or change

the program, in whole or in part, at any time.”

This is an actual example, but other similar language may be found anywhere in the plan documents.

If you are an employee reviewing the current plan, it is important to remember that it can change in the future. The documents in effect when you retire may be the ones that will determine your health benefits, if any, in your retirement. However, court rulings in these matters have not been uniform.

What if the Language is Conflicting or Ambiguous?

Benefit plan documents are often not easy to interpret, and the language, described above, providing an employer’s right to change benefits may be contained in any part of the documents.

Some courts may not enforce what seems like clear “promise” language if the plan document contains general language reserving the employer’s right to amend or terminate the plan.

On the other hand some courts have enforced clear promise language in an SPD, even in cases where the plan document contained a right by the employer to amend the promise. You need to check all documents.

Review Any Employer Communications on Retiree Health Benefits

You should obtain whatever information is available indicating the intentions of your former employer with respect to retiree health care benefits.

- Has your employer sent any correspondence--letters, brochures, medical plan booklets, employee handbooks or other written materials--

containing promises concerning the duration of retiree health benefits?

- Are there records of meetings where your employer made such promises?

You should know that some courts may take into account any informal communications that you have had

with your employer concerning retiree health care benefits, at least where the plan document and SPD are ambiguous.

If You Retire Early, Review Any Agreements or Correspondence from Your Employer Concerning Your Early Retirement

If you retire early and have a special agreement with your employer, carefully consider the materials you have received concerning the terms of your early retirement.

- Do any of these documents contain language regarding the duration of your retiree health benefits?
- Are there any records of meetings that your employer may have had with you concerning an early retirement offer?

You should know that some courts have permitted plans to change benefit promises made with respect to early retirement offers because

the formal plan document, collective bargaining agreement or SPD contained language allowing the employer to terminate or amend the plan.

If you are considering an early retirement, you may wish to protect yourself by negotiating a written contract with your employer that includes the specific terms of health care benefits and the circumstances, if any, under which they can be changed.

Given the uncertainty of the law in this area, you may wish to seek legal advice in negotiating such arrangements with your employer.

Note: The Affordable Care Act established a Federal Early Retiree Reinsurance Program to help employers maintain health coverage for retirees age 55 and older who are not yet eligible for Medicare. Employers that are accepted into the Program will receive reimbursement for medical claims for early retirees, their spouses, surviving spouses, and dependents. The Program ends on January 1, 2014 when early retirees will be able to choose from the additional coverage options that will be available in the health insurance exchanges. Check with your plan administrator or human resources office to see if your employer is participating in the Program. For more information, visit www.healthcare.gov

Get Help in Clarifying Documents and Promises

This brief was prepared to help you understand the terms governing your health benefits after retirement. If you have a question or dispute about your individual retirement benefits or about the possibility of

changes and cuts for you and other employees or retirees, you should consult your union representative or an attorney who is familiar with employee benefits.

Legal action can help interpret or enforce retirement health care promises.

For More Information

As an employee or retiree, you are entitled to a copy of your SPD. You can request a copy from your employer and receive it within 30 days. There may be a reasonable charge (not to exceed 25 cents per page).

However, you have a right to examine plan documents at no cost to you.

To obtain copies of the plan documents, you must submit a written request to your employer. Again, there may be a reasonable copying charge.

If you have questions or need assistance in obtaining these documents, you may contact the Department of Labor's Employee Benefits Security Administration

(EBSA) by calling toll free 1-866-444-3272 or electronically at www.askebsa.dol.gov

Visit EBSA's Web site at www.dol.gov/ebsa for additional information on employer-provided health plans.

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