Expert: Ruling in private pension case could have implications for retirees

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A recent US Supreme Court ruling paves the way for monetary damages when companies misrepresent changes they make to employee pension plans, says Richard L. Kaplan, an expert on taxation and retirement issues. Credit: L. Brian Stauffer

A recent U.S. Supreme Court decision could have a great deal of significance for employees and retirees with a private pension plan, a University of Illinois elder law expert says.

According to law professor Richard L. Kaplan, an expert on taxation and retirement issues, the high court's ruling in Cigna Corp. v. Amara paves the way for monetary damages when companies misrepresent changes they make to employee pension plans.

"The ruling says that when an employer changes its retirement plan, an employee who has been harmed can ask a court to enforce the old plan," said Kaplan, the Peer and Sarah Pedersen Professor of Law.

But according to the ruling, the employee must prove that he or she has suffered financially because of the new changes. Kaplan says this should prompt workers and retirees to take a close look at their retirement accounts, especially if the company has altered the plan in the past.

"If making this determination is difficult because of the intricacies involved, employees should engage someone from outside the company – an elder law attorney, an independent accountant or some other financial professional – and have that person run the numbers," he said.

Employees and retirees should also ask the company for a before-and-after analysis of how the old plan compares with the new plan.

"The decision in this case noted that many employees had asked for a before-and-after snapshot but the company refused to provide it," Kaplan said. "There was an internal corporate document showing that the company did not want to provide before-and-after illustrations. A company is not obligated to provide such comparisons, but the Supreme Court suggested that failing to do so casts the employer in a poor light."

According to Kaplan, the major point of the decision is that the Employee Retirement Income Security Act allows a court to require an employer to pay what the plan required before it made any changes.

"These days, most employers are switching employees from defined-benefit to defined-contribution plans," Kaplan said. "So this ruling is very important for retirees and near-retirees who have a defined-benefit plan from a private company but have been switched to a cash balance plan or some other variant."

Kaplan says the ruling also provided some good news for employers. According to the court's unanimous decision, a summary plan document is just that – a summary. The plan document, not a summary of the plan's benefits, determines the actual contours of the pension plan.

"The summary document may be the only thing an employee reads, but it does not constitute the terms of the plan," Kaplan said. "That does not mean that employers may use the summary document to deceive anyone, but the summary can be less than complete. That's not entirely a new proposition, but it was strongly reaffirmed in this case."

Because the court's ruling was based on ERISA, its decision does not apply to anyone with a public-sector pension.

"State governments are not covered by ERISA, because unlike private employers, states cannot go bankrupt," he said. "For that reason, states are not required to buy insurance from the federal Pension Benefit Guaranty Corp., nor are they required by ERISA to fund their plans on a current basis."

Nearly 40 years after ERISA was enacted, the decision to exclude state plans from its coverage is looking less sound, Kaplan said.

Kaplan discusses the impact of the case in an article titled "Supreme Court CIGNA Ruling Allows Workers to Reverse Harmful Pension Changes" published in the Bureau of National Affairs Daily Report for Executives.

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