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Quarterly Newsletter

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Protecting Your Assets—Now and in the Future

One of the main purposes of the 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. We can help you assess your financial security, perhaps as part of your estate plan.

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.

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 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.

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Giving Women Credit Where It's Due

Under the law, all credit applicants must be considered on the basis of their actual qualifications for credit, and not on the basis of personal characteristics, like sex, marital status, age, race, national origin, religion, or reliance on public assistance income. The Equal Credit Opportunity Act (ECOA) protects consumers from the discriminatory credit practices. In this article, we'll look mostly at gender discrimination.

A credit grantor may not deny you credit or take any adverse action, such as lowering your credit limits or raising your Annual Percentage Rate (APR), just because of your gender or because you are married, single, widowed, divorced, or separated. There are some specific prohibitions in the law:

- A credit grantor may not ask your gender when you apply for credit. One exception would be a loan to buy or build a home, or to repair, rehabilitate, or remodel a home, when asking your gender helps the federal government look for housing discrimination by determining whether equally qualified females and males are able to obtain residential mortgage loans. However, you may refuse to answer this question;
- Normally, you do not have to use a title (Mr., Miss, Mrs., or Ms.) when applying for credit. Sometimes credit grantors may ask whether you are married, unmarried, or separated if your marital status relates to their right to obtain repayment. Such a request would most likely be made in a state with community property laws or if the credit will be secured;
- A credit grantor may not ask you if you use birth control, whether you plan to have children, or whether you will take time off of work to care for your children. Nor are they allowed to make any assumptions about your plans; and
- You do not have to reveal child support or alimony payments to a credit grantor unless you wish the credit grantor to consider it as income. If you do ask a creditor to include child support payments as part of your income, then creditors can consider whether these have been steady and reliable.

If You Suspect Discrimination

If you are denied credit, the Equal Credit Opportunity Act requires a creditor to tell you the specific reason for the denial, or at a minimum tell you that you have a right to ask your creditor in writing why you were denied credit within sixty days. It is not good enough for your creditor to tell you things like "you don't meet our standards" or "your credit report doesn't show that you have enough points for our scoring system." Such vague and indefinite responses are illegal. Acceptable responses would be something more like "you have not been employed long enough" or "your income is too low."

If you are denied credit based on information that was supplied to your creditor by a credit reporting agency, the federal law requires your creditor to give you (in writing) the name, address, and phone number of the credit agency that supplied the information. You should check with that agency to find out what is in your credit report. This information is free if you request it in writing within sixty days of being denied credit.

If you suspect that a creditor has violated the law, you should remember that the law is on your side. No one should be denied credit solely on the basis of gender. You need to be confident and assert your rights. We can help you every step of the way.

First, you or our firm should inform the creditor that you suspect it has violated the law. This is important for two reasons: it shows the creditor that you know the law, and it gives the creditor an opportunity to discover and correct an error. If contacting the company directly does not work, contact the proper state or federal agency. By law, all lending institutions are supposed to post information about their regulating agency in their offices, but many do not. We can help you to find the appropriate authority to contact. If the agency's action does not satisfy you, ask us about filing a civil lawsuit against the creditor. If you win a discrimination lawsuit under the ECOA, you can recover damages, including punitive damages. You can also obtain compensation for attorney's fees and court costs.

Keeping a Paper Trail

If you do have an issue with your creditor, make sure you keep good records and create a "paper trail." You should keep copies of all the forms that you fill out, and any correspondence you send or receive. Send your letters by certified mail, to avoid an evasive "we did not receive your letter" response when you follow up. If you speak to anyone over the phone, make sure you take notes of the time and date, the person's name and title, the gist of what he or she said, and any promises he or she made. If you keep careful records, you'll be able to document your complaint more thoroughly, and you may get a more favorable response from your creditor.

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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 or 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 guaranteed?
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 a vested interest in your pension, meaning that you are entitled to everything you contributed, and everything your employer contributed. If the total value of your pension is $3,500 or less, your plan can require that you take it as a lump-sum payment.
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 100 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 rise 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. If I retire and begin receiving my pension, can I still work?
A. Yes. You can retire, collect your pension, and 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.
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 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.
And you still have a right to all the benefits earned under the old employer. If the new employer abandons the plan, though, you will not continue to earn benefits.
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 under Social Security or SSI.

We are pleased to announce one of our employees, Jim Plecha, has started a computer consulting company, Advantage Computer Consulting Services ("ACCS"). ACCS is dedicated to serving individuals, families and small-medium sized businesses with any and all computer problems. ACCS will work to solve your problems efficiently and effectively. ACCS shall provide professional discounts to all our clients.

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Microsoft CERTIFIED Systems Engineer

Malpractice and the Law

You hear a lot about malpractice law these days—especially when a big judgment is levied against a doctor or hospital. However, you may not know that malpractice law applies to a wide range of professionals. This article will give you a general picture of how malpractice law works. We can explain how malpractice law might pertain to your particular situation.

Q. What professionals are affected by malpractice law?

A. Malpractice law protects you against the risk of being injured by someone who you reasonably expect to have certain knowledge and skills—in other words, a professional on whom you thought you might safely rely. It applies to doctors, nurses, medical technicians, and hospitals, of course, but also (depending on the state) to architects, dentists, engineers, and even veterinarians.

Q. What do I have to prove to win a malpractice case?

A. In general, you have to prove all of these elements:

Duty—that the professional owed you a duty to act in accordance with the standards of that profession

Breach—that the professional breached that duty—that is, was negligent in doing (or not doing) something

Causation—that this conduct caused injury to you or your property

Damages—that financial damages would compensate you for the injury caused by this breach of duty.

Q. How is this different from other kinds of personal injury cases?

A. In broad outline, it's very similar. Malpractice is part of personal injury law (also known as tort law). This area of law is designed to protect you if someone else's act or failure to act harms you or your property. Most often, the other person didn't set out to harm you, but injured you because of negligence.

In a typical personal injury case, the standard for determining negligence is what a reasonable person would have done under the circumstances. In a malpractice case, it is what a reasonably prudent professional in that field would or would not have done under the circumstances.

Q. How do you prove what a reasonable professional would have done?

A. We almost surely will rely on experts in the field, first to determine whether you have a case, then to prove that case. One or more experts in the field will review the facts of the case and give an opinion as to whether the evidence shows negligence. The key is often whether the professional departed from established standards of practice. If so, if the case comes to trial these witnesses will testify that the professional did not meet the standards of the profession.

Q. How quickly should I act if I think I have been injured by a professional's negligence?

A. You should to talk to us as soon as possible. Malpractice cases, like other personal injury actions, are subject to statutes of limitation, meaning that you must bring them within a certain period of time or you'll lose your right to sue. These time periods are often surprisingly short.

Q. I underwent an operation, but it didn't help my condition. Do I have a malpractice case?

A. It's not enough just to be unsatisfied with the results of an operation or the way an architectural project came out. You'll have to go beyond showing your disappointment to show that the professional failed to possess and apply the knowledge and use the skill and care that is ordinarily used by reasonably well-qualified persons in that field.

Q. What kinds of information will my lawyer need to determine if I have a case?

A. We will want to have as complete a picture as possible of your dealings with the professional. Share with us relevant documents and records, and help us understand all the important facts of your case. For example, if your complaint is against a doctor, we will want to know what happened from your first contact to your last. How did your doctor treat your injury or illness? What did your doctor tell you about your treatment? Did you follow his or her instructions? What happened to you during the course of the treatment?

Q. What happens then?

A. If the initial investigation suggests that your claim is one you can recover on, we will determine the extent of your injuries (e.g., pain and suffering, medical expenses, lost wages, lost business opportunities, misappropriation of funds, etc.) and provide a damages figure to the insurer of the professional. If the insurer considers it a valid claim, the case is likely to be resolved early on and won't have to be tried in court.

Most cases are settled in this way before going to court. Settling means that you agree to accept money in return for dropping your action against the person who injured you. You'll then sign a release absolving the other side of any further liability. The decision to accept a settlement offer is yours, not ours, though naturally you'll want to pay careful attention to his or her recommendation.

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