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For Employees, Fight Over Pensions Creates Uncertainty

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NEW YORK -- Rebecca Cornell earns more than $100,000 as a systems engineer at AT&T Labs after working there 30 years. Her annual pension when she retires: $21,000.

That nest egg would have been about 47% bigger, she says, if AT&T Corp. (T) hadn't shifted to a cash-balance pension in 1997.

Cornell isn't the only one who thinks older workers lose out when companies convert to cash-balance plans, which combine elements of traditional retirement vehicles with 401(k)s. Employees have waged a long war over the pensions in class-action suits against International Business Machines Corp. (IBM), Xerox Corp. (XRX), Cigna Corp. (CI) and AT&T. Now, a court ruling against IBM has brought the fight to a critical point.

In July, a federal district court sided with 150,000 employees in a suit against IBM that claimed the company's pensions don't pay older workers their fair share of benefits.

"It's a turning point," said Jane Banfield, a retired AT&T sales manager who took away a $15,000 cash-balance pension after more than 20 years at the company.

"Up until the IBM case, corporations, the American Business Council, accounting firms all felt as though they were going to win if this could be dragged out long enough," Banfield said.

Indeed, the ruling has made the powerful corporate lobby that supports the plans apprehensive. The group consists of big employers and benefits-advisory firms such as Watson Wyatt & Co. (WW) and Towers Perrin.

"The IBM decision has made it clearer to many how high the stakes are, and that it's important to achieve a resolution that everyone can live with," said J. Mark Iwry, a senior fellow at the Brookings Institution and former benefits-tax counsel at the Treasury Department, which sets policy for the plans. "Court decisions holding these hybrid plans to be unlawful present a risk of major liability for employers and potentially the risk of losing pension coverage for employees if companies respond by freezing or terminating their plans."

Without question, the IBM ruling has deepened federal gridlock that began in 1999 when the Internal Revenue Service stopped approving new cash-balance plans because of age-discrimination concerns.

On Sept. 9, the U.S. House of Representatives passed an amendment sponsored by Vermont independent Bernard Sanders that would prohibit the Treasury from getting involved in efforts to overturn the IBM decision.

Treasury Working On Rules

Treasury has been working for nearly a year to finalize rules addressing whether cash-balance plans are age discriminatory. The long-awaited guidance had widely been expected to support cash-balance plans.

Now, a big question is how Treasury will proceed in light of recent events.

William F. Sweetnam Jr., Treasury's benefit-tax counsel, wasn't available to comment. But Tara Bradshaw, a spokeswoman for the agency, said it is "still studying the impact of the [IBM] case, and studying the impact the Sanders amendment would have if it became part of final legislation."

Last week, Towers Perrin, which has been a leading architect of cash-balance plans, sent a letter to members of Congress, calling for legislation to "clarify that hybrid pension plans, such as cash-balance plans, are and always have been valid" under law.

Towers Chairman and Chief Executive Mark V. Mactas said in the letter that "allowing the important issues involved in the case to be slowly resolved by the courts will significantly harm the U.S. pension system" and millions of workers.

Cash-balance opponents dismissed the assertion.

"We're watching these lobbyists like hawks," said Kathi Cooper, lead plaintiff in the IBM case. "Their spin on some of this stuff is verging on lies, as far as I'm concerned."

Iwry, of the Brookings Institution, said efforts to reach a "rational" solution will be complicated because of upcoming national elections.

Ironically, despite all of the furor, the government hasn't made public any data on the number of existing cash-balance pensions, according to Dallas L. Salisbury, president and CEO of the Employee Benefit Research Institute, a nonpartisan group.

The Erisa Industry Committee, a lobbyist for big companies, says that more than 400 major companies have adopted cash-balance and other hybrid pensions. They cover millions of employees and hold 40% of all traditional retirement-plan assets invested in the U.S., according to ERIC.

Cash-balance plans leave investing to employers and promise fixed benefits, like traditional pensions. But like 401(k)s, they are set up as individual accounts, with benefit and interest credits. Age-discrimination charges focus on the fact that employers often reset the clock when converting to cash-balance plans, bringing older workers' benefits into line with those of younger workers.

Also, older workers have less time to accumulate interest credits in the plans and don't get a final benefit based on higher salaries paid near retirement.

Benefits firms and corporate lobbyists argue that cash-balance pensions allow employers to continue offering some of the security of a traditional retirement plan. If it becomes too difficult to maintain them, they say, employees will lose out when companies freeze plans or switch to 401(k)s.

But Rebecca Cornell isn't convinced.

"I make a good living and I work hard for it," said Cornell, of AT&T. "I thought I would have a good retirement. If the stock market holds up, I can survive. But if you've given 30 years of dedication, it doesn't make sense to penalize older workers."

AT&T declined comment, citing a policy that prevents it from discussing ongoing litigation.

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