CHAPTER 6

NEW PENSION REFORM LEGISLATION

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Introduction

After more than a decade of effort, both public and private, the Congress last fall enacted a landmark piece of legislation—the Employee Retirement Income Security Act of 1974. Its implementation presents many challenges for the Department of Labor and the Internal Revenue Service, which are jointly charged with responsibility for its administration and enforcement.

The basic purpose of the law is to assure employees and their beneficiaries that pensions and other employee benefits that have been promised will actually be paid. It is designed to eliminate the tragedies that occurred in the past when a retired worker found too late that the pension he or she had relied on for security in old age would not be paid, and that he or she was without effective legal recourse. A cynical view of the pension promise in the past shrank to this: "If you remain in good health and stay with the same company until you are 65 years old, and if the company is still in business, and if your department has not been abolished, and if you haven't been laid off for too long a period, and if there is enough money in the fund, and if that money has been prudently managed, you will get a pension."

Disappearance of an expected pension occurred in the past for a variety of reasons. Sometimes employees resigned or were discharged and found that, because they left their jobs before retirement age, they were entitled to nothing, frequently despite a lifetime of employment. Some workers with 30, 40, and even more years of service found themselves ineligible for pension benefits because the continuity of their service with one employer or a particular plan was broken. Many plan participants were victims of other events beyond their control—failure of employers to con-

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tribute to a multiemployer plan, frequent layoffs resulting in cancellation of previously earned pension credits, plant shutdowns, or company mergers.

One highly publicized example was the wholesale cancelling of pension rights following the closing of the Studebaker plant in 1964. That closing deprived many employees of pensions—employeees who were represented by a strong union, many with long-term employment histories. It caught the attention of the country and is generally deemed one of the single identifiable events that triggered efforts to enact termination insurance, such as that now included in ERISA—the acronym for the Act.

The Studebaker experience provided the popularized banner, but there were thousands of other cases, less publicized but equally heartrending. Last fall, for example, I noted an item in the *New York Times* about a small laundry concern forced out of business primarily by technological improvements in home laundry, which left some employees with 30 or 40 years of service without expected pensions. This is not a rare event; hundreds of similar cases are never mentioned in the press. While ERISA cannot provide security for all employees, it will go a long way toward mitigating the most tragic situations like these.

Internal Dispute Settlement Under ERISA

The long-awaited legislative reaction, while riding on the crest of the emotional wave, suffered the inevitable debilitation of compromise. As might be expected during the infancy of any major reform legislation, much discussion and speculation has been generated by the passage of the new law—specifically, in this instance, as to how it applies to and affects the participants and beneficiaries of private pension and welfare plans as well as employers, labor organizations, insurance companies, banks, and many other institutions. While much of this discussion and speculation has pointed to the extensive reporting and disclosure requirements, vesting and funding standards, and fiduciary responsibilities placed upon employers and benefit-plan administrators, it should be remembered that the primary purpose of the Act is to provide fundamental protections and guarantees for the *participants* in employee benefit plans. Speaking as an official of the Department of Labor who has been assigned a major responsibil-

ity for carrying out the provisions of the Act, I wish to emphasize that our administration and enforcement of this law will at all times adhere to the principle of protecting the participants' and beneficiaries' rights.

In the general context of protection of employee rights guaranteed by the law, the discussion need not expand very far to embrace the concept of protection of employee rights under an agreement. And this, then, can lead to the subject matter of direct interest to a body composed of professional third-party neutrals—namely, dispute settlement over benefit entitlement. Internal dispute settlement is covered in ERISA under Section 503, titled "Claims Procedure." In a complex and lengthy statute, this section takes up only nine lines of space; yet its potential importance bears little relationship to its brevity. The key phrase of Section 503 reads this way: ". . . every employee benefit plan shall . . . afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claims."

This language, which was finally adopted by the Congress, represents a compromise between other legislative proposals appearing in earlier versions of the pension-reform legislation. The determination of pension rights contained in one of the early proposals considered by the Senate specifically authorized the Secretary of Labor to hear and decide disputes between participants or their beneficiaries and plan administrators with respect to present or future benefits. Needless to say, the Department was extremely concerned with the impact the caseload generated from this proposal, if enacted, would have on its ability to meet its other responsibilities under the Act.

Not that we argued with the concept of providing a right under federal law for participants or their beneficiaries to have access to an inexpensive forum for having their pension rights determined. No such procedure was provided for in the Welfare and Pension Plans Disclosure Act; and in the absence of any grievance or arbitration procedures for the determination of pension rights that may have existed in the plan documents or the collective bargaining agreements, the participants' only redress of a claim denial was through court action. However, with 35 million potential grievants out there, the Secretary of Labor could

become a very busy grievance man. We believed that such a system was both unworkable and unnecessary.

A different procedure for the resolution of disputes between participants and plan administrators—and one that we supported —was contained in the legislation adopted by the Senate and sent over to the House. That procedure provided that each employee-pension-benefit plan shall provide for "the fair and just review" of disputes and "an opportunity, after such review . . . for the arbitration of such disputes." Under that proposal, the cost of any arbitration proceedings was to be paid by the plan "unless the arbitrator determines that a participant's or beneficiary's allegations are frivolous."

The House version of the pension-reform bill contained no comparable provisions pertaining to the settlement of pension disputes, and when the final form of the legislation was being developed by the conferees, there was a variety of opinions as to which claims procedure, if any, should be adopted.

At any rate, the net result of this bit of legislative history is now embodied in Section 503 of the Act and, as mentioned above, this procedure applies to all employee benefit plans, not only to pension plans. As you can see, it gives neither the Department of Labor nor the arbitrators the caseload contemplated in the earlier versions of the legislation.

The Secretary of Labor is authorized by Section 503 to issue regulations implementing the statutory language, and the Department gave notice of such proposed rule-making on December 4, 1974. In view of the legislative history I have just outlined to you and the rejection by the Congress of the proposal to compel the arbitration of disputes between participants and plan administrators, the Department has likewise stopped short of requiring employee benefit plans to provide for arbitration of any disputes over benefit entitlement. However, the proposed Department of Labor regulations under ERISA do contain the stipulation that "a claims procedure which is established and maintained pursuant to a collective bargaining agreement and which includes provision for binding arbitration of an appeal of a claim denial will be deemed a reasonable claims procedure."

We have received some comments on this particular aspect of the proposed regulations. Some have objected to such a claims

procedure as being unfair because any such claim would probably have been denied by a joint board of trustees consisting of the same union and employer representatives who were involved in negotiating and administering the collective bargaining agreement. Furthermore, critics contend that such a procedure would vitiate congressional intent that the federal courts have jurisdiction, since arbitration would sharply limit court review. We have been carefully reviewing all the comments received, and we expect to publish the final regulations very shortly.

Legal Role of the Arbitrator Regarding Benefit Plans

Before going further with the implications that ERISA will have for the arbitration profession, it might be useful to touch briefly on the role of the arbitrator in regard to employee-benefit plans. The most obvious, and the one alluded to in the foregoing remarks, is in the area of disputes over benefit claims, which would be in the nature of a grievance. Another, and one which may be of increasing importance in the future, is in the area of interest arbitration, where the arbitrator is faced with making a determination as to the terms of an employee benefit plan, such as the level or types of benefits to be provided.

First of all, let me add that a vast number—probably the majority—of employee benefit plans do not come under a collective bargaining agreement, but have simply been established unilaterally by the employer. Thus, when we speak of the role of arbitration in regard to employee-benefit plans, we are talking about implications for substantially less than the total number of such plans in existence.

For those plans that do come under a collective bargaining agreement, Sections 301 (a) and 302 (c) (5) of the Taft-Hartley Act have had the most importance regarding the role of third-party neutrals. Section 302 (c) (5) of Taft-Hartley stipulates that in the case of jointly administered trusts, neutrals are to be empowered to break deadlocks of a joint "board of trustees" involving disputes over any issue in the administration of the trust. Section 301 (a) of Taft-Hartley is one provision in which this group of professionals is obviously well versed—namely, that suits may be brought in district court for violation of an agreement between an employer and a labor organization, and the subsequent

doctrine on the part of the courts, as enunciated in the *Steelworkers* trilogy,[1] to defer such disputes to arbitration. This doctrine has been upheld in various cases since the trilogy cases of the early 1960s, and in 1974 alone several 301 (a) suits brought in district courts specifically involving pension plans were likewise deferred to arbitration.

For example, a recent decision by the U.S. District Court for the Middle District of Florida held that the trustees of a health-and-welfare fund are required to exhaust the grievance-arbitration procedures of a collective bargaining agreement prior to bringing action against an employer under Section 301 of Taft-Hartley to recover delinquent contributions to the fund.[2] In so ordering, the court pointed to Supreme Court decisions declaring that federal policy encourages arbitration of labor disputes and that arbitrability is to be presumed. Thus, the court enunciated that ". . . arbitration is peculiarly suited to the establishment of a private common-law-of-the-shop while also providing the most efficient and expeditious means of resolving individual disputes by selection of impartial arbitrators having accumulated expertise related to the particular industry or issue involved."

What makes this particular case so interesting is that the court took this rationale for arbitration relating to the traditional two-party union-employer dispute and extended it to a three-party union-employer-trustee dispute. Nevertheless, the court pointed out that if a broad arbitration clause does not exclude the trustees, who are commercial third-party beneficiaries, it must be concluded that they are also subject to it. Deferring to arbitration brings to bear upon the dispute expertise that the court lacks.

In reaching this decision, the court also referred to Section 302 of Taft-Hartley, which requires arbitration of certain disputes concerning internal trust-fund management. "While these provisions do not compel . . . that this dispute be arbitrable, they are helpful in illustrating the congressional intent that arbitration should play an important role in labor-management relations."

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[1] *Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

[2] *International Brotherhood of Electrical Workers, Local 308, et al.* v. *Dave's Electrical Service, Inc.*, 382 F.Supp. 427, 87 LRRM 2611 (1974).

Actual Experience of Arbitrators

The next logical question, then, might be to ask to what extent arbitrators have been involved in the settling of disputes over the interpretation of the terms of a plan or the negotiations of these terms. Data from the Federal Mediation and Conciliation Service files provide some indication as to the extent of involvement of arbitrators in employee benefit disputes. During fiscal year 1974, arbitrators selected from FMCS panels made almost 4,500 awards. Over 98 percent of the awards involved disputes over the interpretation of an agreement. Only 23 of the awards involved pension issues, while 55 involved health-and-welfare issues. Thus, of all such arbitration awards during that year, less than 2 percent dealt with employee-benefit-plan issues.

Although the FMCS arbitration case statistics indicate that arbitration of employee-benefit-plan disputes is not prevalent, other data maintained by that agency show that a significant number of arbitrators have experience in this area. Of approximately 1,200 arbitrators listed on the FMCS roster, 250, or over one fifth, indicated that they have experience in pension issues, and almost 450 indicated experience in health-and-welfare issues.

Additional data on the arbitrator's role in employee-benefit-plan disputes will be forthcoming in a study that the Labor-Management Services Administration of the Department of Labor is presently conducting. This study is examining procedures for the settlement of disputes over eligibility, benefits, and so forth, in a sample of pension plans. The preliminary results of this study provide some interesting data. Virtually all jointly administered plans in the sample contain an appeals procedure whereby an initial determination regarding pension entitlement can be appealed to the joint board of trustees, composed of an equal number of employer and employee/union representatives. As provided in Section 302 of Taft-Hartley, if the joint board is deadlocked, the dispute is referred to a third-party neutral. If the joint board is not deadlocked, of course, the board's decision becomes final and binding.

Potential Scope of Issues Regarding Dispute Settlement (Post-ERISA)

The situation is different for the sample plans administered solely by employers. The documents and plan descriptions on file

at the Department reveal that the internal dispute-settlement procedures vary considerably, and many such procedures have no provision for arbitration. Slightly over half of the selected collectively bargained pension plans analyzed that were employer administered contained no provision for arbitration of disputes over benefit entitlement; in most of these plans, an appeal merely consisted of a review and/or reconsideration of the unfavorable initial determination by the employer/retirement committee (administrator of the plan). About 10 percent of the plans had no appeals procedure at all and contained language to the effect that "decisions of the retirement committee are final and binding."

On the other hand, slightly under half the pension plans in this category did provide for appeals procedures ending in arbitration, though not all of these procedures were exactly alike. For example, some plans referred appeals to a special joint board, with a provision for arbitration if the board could not agree on a decision. Other plans indicated that the grievance and arbitration provisions of the basic labor agreement were to apply to pension disputes.

In summary, then, this study of selected pension plans indicates that for most jointly administered collectively bargained plans, a dispute-settlement procedure exists, usually consisting of an appeal to the joint board of trustees and, in the event of a deadlock, submission for final decision to an arbitrator in accordance with Section 302 of Taft-Hartley. For employer-administered pension plans under collective bargaining, the sample results revealed a small number with no dispute-settlement procedures at all. The majority, which did contain an appeals procedure of some sort, did not all end in arbitration; as a matter of fact, fewer than half provided for final and binding decision by a neutral.

But this is not the end of the story. The preceding analysis accounts only for the provisions in pension plans; it does not take into account the basic collective bargaining agreement itself. Thus, although a dispute-settlement procedure and/or provision for arbitration is nonexistent in a pension plan itself, the absence thereof could be offset if the general grievance procedure and arbitration provision of a basic collective bargaining agreement also apply to disputes over pension matters. This, of course, will depend upon what the basic labor agreement says about the pension

plan and also the wording of the grievance and arbitration provisions.

An analysis was also conducted of the relevant collective bargaining agreements. The preliminary results show that, for the most part, the majority of agreements contain an article or provision pertaining to a retirement plan. However, the language is often limited to providing for the continuation of the plan and for employer contributions. A few agreements state that the pension plan is incorporated into and made a part of the agreement, but most are silent on this point. A few do not even mention the pension plan at all. By the same token, the grievance and arbitration provisions are generally broad, without any specific inclusion or exclusion of pension disputes; usually they are framed in terms of "interpretation and application of the terms of the agreement."

There are exceptions, of course. For example, one agreement stated that pension benefits were provided pursuant to a separate agreement and specifically precluded using the grievance procedure of the labor agreement for any matter involving provision of the pension plan. In this same context, a number of years ago the BLS analyzed arbitration procedures of virtually all agreements in the United States covering 1,000 workers or more, exclusive of railroad, airline, and government agreements. Of a total of more than 1,600 agreements that contained arbitration procedures, 69, or slightly more than 4 percent, specifically excluded any issue involving benefit plans from arbitration.

Now, in the *Labor Arbitration Reports,* published by The Bureau of National Affairs, Inc., a number of arbitration decisions involving pension-related issues have been reported. I have mentioned that, generally, most arbitration procedures in basic collective bargaining agreements are broad, general statements with reference to all disputes or disputes over interpretation and application of agreements. Very few specifically exclude issues involving employee benefits. Theoretically, if a pension plan contains no arbitration provision and the basic collective bargaining agreement contains a broad arbitration provision, an arbitrator faced with a benefit-related issue could rule in one of two ways concerning arbitrability—either that such matters are arbitrable without a specific *exclusion,* or that such matters are not arbitrable absent a specific *inclusion.* The arbitration cases on this mat-

ter that have been reported indicate that the former stance is the most prevalent—that is, absent an express or, at least, an implicit preclusion, arbitrators appear to extend general grievance procedures and/or arbitration provisions in basic labor agreements to encompass the benefit plan.

A number of reported cases speak directly to the issue of arbitrability. For example, in a case involving the validity and equitableness of a plan to allocate the assets of a pension plan soon to be terminated, an arbitrator addressed the propriety of arbitration: "Submission of the issues here to arbitration would appear to be proper under the grievance and arbitration provisions of the labor agreement. . . . The provisions . . . relating to grievance procedure and arbitration are broad enough to encompass disputes arising under the Retirement Plan Agreement. The availability of arbitration in such cases is generally recognized. . . ." [3]

With but few exceptions, this viewpoint appears to be the more prevalent among the cases reported to BNA. Thus, in the past, arbitrators have dealt with the merits of a variety of issues involving employee-benefit-plan grievances. Some of the more common are: What rights does an employee maintain, with regard to benefit coverage, while on layoff or disability? What rights does an employee have, with regard to benefit coverage, while on strike? Or, for the period prior to a strike? Does an employee qualify for pension benefits when his or her employment is terminated as a result of a plant closure and when at such time the employee does not meet the eligibility requirements of the plan? Can a retiree's benefits be reduced by the equivalent amount of a public benefit received (for example, workmen's compensation or disability benefit)?

Some of these questions have been resolved, at least in part, by ERISA minimum standards. Others have not, and may well be brought before you again. And the new law has certainly made other issues pertinent to resolution of claims disputes that are likely to be brought before members of your profession. For this reason I would like to examine briefly the scope of issues likely to be heard in a procedure involving claim denial.

Most hearings on claim denial will probably involve a dispute on the facts. Did the employee actually work the number of years

[3] *J. B. Williams Co.*, 47 LA 596, 598 (Barnhart, Arb., 1966).

and at the wage levels he says he did? This is a type of case with which you are thoroughly familiar and where your expertise can be of great help.

A more complicated case might involve interpretation of plan provisions. The employee may argue that, under the agreed facts, he is entitled to a larger pension than he is granted. In some instances this will be similar to the cases of contract construction to which you are accustomed. In others, however, the claimant may make the argument that, if the plan is construed in the way proposed by the plan administrator, it would be in conflict with the requirements of ERISA. If this argument is raised, you will need to consider the relevant provisions of the law. If you agree with the claimant, some difficult legal issues may be raised.

These issues are clearly raised if the claimant agrees with the facts and the interpretation of the plan presented by the plan administrator, but argues that the plan itself is in conflict with the requirements of ERISA. Resolution of a dispute of this type requires a knowledge of the Act.

This would also hold true in interest arbitration involving an employee-benefit plan. It may be that one party is demanding something that is violative of the Act. For example, suppose the employer was demanding that a certain proportion of the plan assets be invested in the company's common stock. Now in this case, the Act limits the proportion of assets that may be invested in employer securities or property; that is, no more than 10 percent of the fund may be so invested. Clearly, an arbitrator should be thoroughly aware of the Act's provisions before rendering a decision on such an issue.

Provisions of the Act of Particular Interest to Arbitrators

At this time, I would like to briefly summarize those provisions of the Act that are most likely to be issues in claim-denial disputes, namely participation, vesting, accrual of benefits, survivor's benefits, years of service, breaks in service, and seasonal employment. All or some of these provisions may also be issues in interest-arbitration disputes. I want to caution you that regulations implementing the statute are still to be issued and may modify the application of the standards in particular situations.

First, a plan may not require an employee to wait longer than age 25 and one year of service to be eligible to participate in a pension plan. If, however, a plan provides for immediate full vesting for all participants, it may require three years of service for eligibility to participate. Certain educational institutions with 100 percent vesting for participants may require age 30 for eligibility to participate.

Plans may not exclude an employee because he is too old, except that defined benefit plans and target benefit plans may exclude employees who are within five years of normal retirement age when hired.

In the Keogh or H.R. 10 plans for the self-employed and their employees, participation must be granted after three years of service and vesting is 100 percent as soon as participation begins. This is the same as under prior law.

As to vesting, standards have been added to the law that for the first time assure an employee who leaves his job before retirement that he will be entitled to benefits when he retires if he has participated in a plan for a sufficient period. Where benefits based on the employee's own contributions are concerned, *any* period of time will be sufficient. No longer will plans be allowed to deprive an employee who separated from employment of everything, even the right to a return of the contributions he himself made to the plan!

With respect to benefits derived from employer contributions, the length of time needed and the percentage of vesting depends upon which of three alternative formulas the employer chooses. If he chooses graded vesting, the participant will be vested in 25 percent of his accrued benefit after five years of covered employment, and this percentage will rise in increments of 5 percent until it reaches 50 percent after 10 years, and in increments of 10 percent thereafter until the employee is 100 percent vested after 15 years. Under the second alternative, the so-called "10-year cliff," all vesting is delayed until the employee has 10 years of covered employment; at that point he is 100 percent vested. The third alternative, the rule of 45, provides for 50 percent vesting when an employee has at least five years of service and his years of service and age equal or exceed 45. Thereafter his vested percentage increases in annual increments of 10 percent until it

reaches 100 percent after 10 years when his age and years of service equal or exceed 55. If the rule of 45 is adopted, a participant who has completed 10 years of service has a nonforfeitable right to 50 percent of his benefit regardless of his age, and to an additional 10 percent for each year of service above 10; thus he is fully vested after 15 years of service regardless of his age.

A fourth alternative is available to "class year plans," defined as any profitsharing, stock-bonus, or money-purchase plan under which employee rights for each plan year are separately vested. Such plans meet the standards of the Act if they provide for employees to vest fully in employer contributions made in their behalf, plus the income earned on such contributions, not later than five years after the contribution was made.

The amount of the pension payable to a retired participant is determined by applying the vested percentage to the accrued benefit. Thus the provisions in the Act relating to accrual of benefits are significant. They require regular annual accruals and are designed primarily to avoid a situation in which an employee who has worked for a number of years and is a participant in a covered pension plan discovers too late that most of the dollar benefits under the plan depend upon his having been employed during the later years of a working life, for example, between ages 60 and 65. Provisions leading to this result are called "back-loading." Back-loading heavily penalizes the worker who leaves employment for any reason before the years at which large benefit accruals take place and provides too great an incentive to an employer to dismiss workers when they reach that age. It is now prohibited.

For purposes of participation, vesting, and accrual of benefits, a year of service is normally 1,000 hours of service within a 12-month period. However, the Act provides more flexible criteria for seasonal industries and the maritime industry.

In the case of a seasonal industry "where the customary period of employment is less than 1,000 hours during a calendar year," the Secretary is authorized to issue regulations denoting a lesser number of hours as a year of service. This authority has not yet been implemented, primarily because it is a critical matter in this area and a great deal of study and consultation is required before the Department is satisfied that the identification and definition

of a seasonal industry is appropriate. The definition may have great importance for employees who work less than 1,000 hours; those who do so in a seasonal industry are entitled to be covered and to get vested benefits if the employer has an applicable pension plan.

In the case of any maritime industry, 125 days are to be treated as 1,000 hours. Regulations to implement this provision are also forthcoming.

Another important corrective provision that affects participation and vesting is the new restriction on penalties for a break in service, defined as a 12-month period designated by the plan (in accordance with regulations to be issued by the Secretary) during which the employee has 500 or fewer hours of service.

The new rules will help nonvested employees who incur a break in service, as, for example, employees on extended layoff. Previously, such employees may have forfeited all service accrued prior to the break even though they subsequently returned to work for the same employer. In the future, such a forfeiture will be permissible only if the employee's absence equals or exceeds his service accumulated prior to the break.

Also of major importance are the new provisions for joint and survivor annuity options. This type of annuity is one shared by husband and wife and, in the case of the death of either, provides support for the survivor. In the past, plans were free to offer a joint and survivor annuity option, or not to do so. Now for the first time, all plans subject to the vesting provisions that offer benefits in the form of an annuity (and most plans do) must offer participants the option of a joint and survivor annuity under certain conditions.

Moreover, the way in which the option is to be offered greatly minimizes the possibility that participants will fail to choose the option through carelessness. Too often in the past, plans that provided a joint and survivor option required the employee to file a formal request for the joint and survivor form, and the participant retired on a single annuity or died before filing the request. In the future, the consequences of inaction will generally be reversed; the survivor of a retired participant will be paid an annuity unless the employee has filed a written election prior to the annuity's starting date against the joint and survivor form. Fur-

thermore, this election will not be valid unless it was made after the participant received a written explanation of the terms and conditions of the joint and survivor annuity and of the effect of such an election.

If the participant dies before retiring, however, payment of a joint-and-survivor annuity will not be automatic. Indeed, if the participant dies before reaching the greater of the early retirement ages under the plan or 10 years prior to normal retirement age, the plan is not required to pay any benefits. If, however, the participant continues to work after the later of these two dates and the plan provides for early retirement, it must give the participant an opportunity to elect a joint and survivor annuity to protect his spouse should he die prior to retirement. The amount of the survivor's annuity must be at least half of the annuity payable to the participant while he and his spouse are both living.

Plans are not required to subsidize the joint and survivor feature, although they are permitted to do so. The law allows plans to make reasonable actuarial adjustments for providing the survivor benefit. Thus, an employee's pension may be reduced if a survivor benefit is provided for the spouse; the amount of the reduction would depend upon the plan provisions and the difference in ages between the employee and spouse.

The provisions for joint and survivor annuities protect the spouse only if he or she has been married to the participant for at least one year prior to the death of the participant.

Keogh or H.R. 10 Plan

Under prior law, self-employed individuals were allowed to put aside—tax free—up to 10 percent of their earnings, but no more than $2,500 per year. This is the Keogh or H.R. 10 plan. With the new law, beginning January 1, 1974, the self-employed can set aside up to 15 percent of their earnings, with a top limit of $7,500. For those with small earnings from self-employment, $750 or 100 percent of earnings, whichever is less, can be set aside tax free. It should be noted that those Keogh plans that include employees are covered by the reporting and disclosure, fiduciary, and other provisions of Title I, although such plans were not covered by the Welfare and Pension Plans Disclosure Act. Unlike the WPPDA, there is no exemption from general coverage under this law based on the number of plan participants.

If you have a Keogh plan and employ a secretary or any other individuals, your Keogh plan must cover them after completion of three years of service and is thereby an employee pension-benefit fund subject to ERISA's reporting and disclosure, fiduciary, and other Title I provisions. If you have no employees, of course, your Keogh plan would not be covered by these provisions.

Extensive reporting and disclosure about plan operations and finances must be made to the Secretary of Labor as well as to plan participants and beneficiaries. I won't go into all the reporting and disclosure requirements today. I'll just mention that the principal reports are the plan description form EBS-1, the summary plan description that must be written so as to be understood by the average plan participant, and the annual financial report.

Those of you with Keogh plans covering your employees must also comply with the fiduciary provisions. I won't go into these provisions either, except to say that this section requires that those responsible for handling pension funds do so solely in the interests of the plan participants in accordance with the "prudent man" rule, and the section expressly prohibits certain conduct and transactions. The "prudent man" rule of ERISA says that fiduciaries shall discharge their duties with ". . . the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

There is one other area of the Act which should be of particular interest to those of you who have established pension plans. This is the much discussed pension plan termination insurance feature, which is found in Title IV of the Act. Most defined benefit plans are subject to termination insurance. One of the principal exemptions has to do with plans established by professional service employers. Such plans are exempt from coverage, provided they cover less than 26 active participants.

Conclusion

I hope I have been able to outline for you the effects this new law will have on you—specifically as arbitrators, but also in your capacity as employers.

You, in these roles, and we in government share a single and vital responsibility under ERISA and that is to keep foremost in our approaches the interests of plan participants and their beneficiaries.

This law was born out of the injustices that were inflicted on workers in pension plans. I welcome the opportunity it gives me, as a federal executive, to implement its provisions. I am sure that you welcome a similar challenge and opportunity in your profession.