



PROTECT ALL CASH BALANCE PLANS

Trial Lawyers are Generating Huge Liabilities for Companies with Hybrid Plans. If Congress does not provide a comprehensive solution, trial lawyers will continue to sue – pension plans are the largest pot of money left for them to go after – forcing every company with an existing cash balance plan to prepare to be sued. A typical Fortune 500 company faces from hundreds of millions to billions in litigation exposure (regardless of fault) and will have to find cash reserves – either through job cuts, reduced research and investment, or reduced benefits like retiree health benefits – to meet the liabilities.

Employers Are Seeking Statutory Confirmation Not a New Law. The overwhelming indication to employers has been that hybrid plans are a valid and legal plan design despite conflicting messages in recent years. Therefore, employers are looking to Congress to confirm established precedent.

Existing Plans Should Not Be Treated Differently From New Plans. If existing hybrid plans have met the age discrimination standard, they should have as much protection from litigation exposure as plans that will be put into place in the future. A statute that is prospective only or includes carve-outs is unfair and biased against existing plans.

For Over a Decade The Treasury Department Granted Determination Letters to Hybrid Plans. With the initial implementation of cash balance and hybrid plans in the mid-1980s, the Treasury Department issued determination letters confirming that they were tax-qualified retirement plans. The moratorium against further determination letters was not implemented until 1999 – well after a decade of issuing approval letters and the establishment of over one thousand hybrid plans.

There Has Been De Facto Affirmation of the Hybrid Plan Design. Both Treasury and Congress have established rules and regulations that specifically contemplate and, thus affirm, the hybrid plan design. For example, the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 provided for increased disclosure to hybrid plan participants and the Form 5500 specifically lists cash balance plans as a defined benefit plan feature. Moreover, Treasury regulations governing pension coverage of low-paid employees provide express rules on how cash balance must comply, and written Treasury guidance has even stated that cash balance plans are not age-discriminatory.

Most Courts Confirm the Legality of Hybrid Plans. Of the several court cases that have decided the issue of whether cash balance and hybrid plans are inherently age discriminatory, only one court – which ignored judicial and regulatory precedent – ruled against the hybrid plan design. Congress should not allow one case that ignored legal precedent to continue to put retirement plans and workers' retirement security at risk.

- In 2000, the Southern District of Indiana ruled that cash balance plans are NOT inherently age discriminatory.¹

¹ Eaton v. Onan Corp., 117 F. Supp. 2d 812 (S.D. Ind. 2000).

- However, another case decided in 2003—in the same circuit—refused to accept this precedent and found that cash balance plans are inherently age discriminatory even while recognizing that any disparity in benefits was based upon the time value of money.²
- Most recently, in June of 2004, a Maryland district court ruled that cash balance plans are not age discriminatory.³

Exposing Current Hybrid Plans to Continued Liability Would Devastate the Defined Benefit Plan System.

There are over 1500 hybrid plans covering over 8 million workers. Moreover, the number of workers covered by a cash balance plan has been steadily increasing even though the number of workers covered by defined benefit plans generally has been decreasing.⁴ If employers do not receive confirmation of the validity of existing hybrid plans, they will have to terminate these plans and the most vital part of the defined benefit system will be lost.

²Cooper v. IBM Pers. Pension Plan, No. 99-829-GPM , 2003 U.S. Dist. LEXIS 13223 (S.D. Ill. July 31, 2003).

³Tootle v. ARINC, Inc., No., CCB-03-1086, 2004 U.S. Dist. LEXIS 10629 (D. Md. June 10, 2004).

⁴ The percentage of full-time workers covered by a defined benefit plan has dropped from 32 percent in 1996 to 22 percent in 2000. But of those covered by a defined benefit plan, the incidence of cash account plans has risen from 4 percent in 1996 to 23 percent in 2000.