

EMPLOYEE BENEFITS LAW

Spring, 2008
4:30 – 5:45/Tues, Wed
Room 308

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TEXTBOOK: Pension and Employee Benefits Law, 4th Ed.
John Langbein, Susan Stabile and Bruce Wolk
Foundation Press 2006
(Statutory Supplements will be provided)

CLASS MEETINGS: You will be expected to attend classes and participate. This is a small seminar where everyone will be expected to know the material and add to the discussion. Your grade will be affected by your relative success in this area.

CONTACT: You may contact me by phone or by e-mail. If you need to talk to me, please call or e-mail to set up a mutually convenient time.

GRADES: You will be graded on your (1) class preparation, (2) class participation, (3) presentation of a paper on a topic you select (from the list or as approved), and (4) the actual paper. The weight will be as follows:

25%	Class participation and readiness
25%	Class presentation of topic
50%	Quality of paper

PAPER: You will be asked to choose a topic for presentation and discussion in class. You must decide before the end of class on February 7. In addition, you will be expected to turn in a paper discussing this topic within three weeks after your presentation. Those presenting during the last few weeks of class will have less time after the presentation as all papers must be tendered to me before May 6, 2008.

The paper should reflect your status as a graduate school student and be written in a scholarly and thorough manner. Footnotes will be expected to be completed in proper form allowing the reader to refer to your sources. A bibliography and/or table of cases should be included. Ten to twelve pages should generally suffice, but you should be careful to cover your topic adequately. Pay attention to grammar and readability.

A list of possible topics is will be distributed, and we will try to fit your presentation in at a reasonably appropriate time in the course. You are very welcome to suggest a different topic, however, I must be consulted and approve the topic by February 7. If more than one person wishes to discuss a topic, I will have to limit the right to choose on this basis.

ABOUT YOUR READING ASSIGNMENTS:

1. This is a new text for me. I think it is an interesting text that presents a great number of policy issues for discussion. Because it is the first time I am using it, I know we will have to alter the schedule as time goes on. I don't think you will have much too much trouble keeping up with

the reading, but if you find it unreasonable, I need to know that. If you have questions as you read, jot them down. Hopefully, they will be answered in class discussion. If not, bring them up.

2. Read the cases, but do not outline them. Be prepared to talk about the holding and importance of the case.

3. I will pass out copies of the relevant code sections and regulations so that you do not have to buy another book.

5. We may not cover every topic in the book. I will try to cover what I think is most important.

		Reading
January 15-16	Fundamentals	Ch. 1
January 22-23	Pension/Defined Contribution Dichotomy	Ch. 2,
January 29-30	ERISA	Ch 3
February 5-6	ERISA and Vesting	Ch. 3 and 4
February 12-13	Forfeiture and Amendment	Ch 4 and 5
February 19-20	Taxation	Ch. 8
February 26-27	Antidiscrimination	Ch. 9
March 4-5	Antidiscrimination	Ch 9
March 11-12	No Class (Time made up in other sessions)	
March 18-19	Limitations and Taxation of Participants	Ch 10 and 11
March 25-26	No Class (Spring Break)	
April 1-2	Fiduciary Issues	Ch. 12
April 8-9	Fiduciary Issues	Ch 12 & 13
April 15-16	ERISA Litigation	Ch. 16
April 22-23	Preemption	Ch. 17
April 29-30	Spousal Interests	Ch 7

SUGGESTED TOPICS

1. What are Roth 401(k) deferrals, how do they differ from regular 401(k) deferrals, and why would someone choose to make them? Are they worth doing? Do many people use them? What categories and why?
2. What does it mean to self-insure a health care plan? What constraints are placed on employers who do? What are the risks and how are they mitigated? What benefit is it to an employer?
3. What is a "cash balance" plan and why would an employer want to convert to one? What are the arguments against conversion? Do you think they should be allowed? Is it discriminatory against older workers?
4. What are the requirements for a Summary Plan Description and what weight should be given to the language in it? Should it control what benefits participants are entitled to? When? What do the courts think?
5. Discuss the anti-alienation principles and exceptions to it, purpose and problems inherent in its application. What differences are there in the anti-alienation provisions between IRAs, Simple Plans, Pension and SEPs?
6. Explain ERISA pre-emption and the saving clause and the problems caused by them in enforcement of rights. Illustrate issues with cases.
7. Who is a plan fiduciary? What third parties may be held to a fiduciary standard and when? What consequences? What problems?
8. What restrictions are there on investment of plan assets? When do assets become "Plan Assets?" How are trustees limited in investing? What is ERISA 404(c) and why would someone want to comply with it? Discuss cases.
9. What is a "prohibited transaction" and what happens if you make one? How can you take action that might be considered a "prohibited transaction" but avoid bad consequences? Development of law in this area.
10. Consider Great-West v. Knudson, 534 US 2004 (2002) and its progeny (district court and court of appeals cases after that date): what did ERISA intend? Should the law be changed?
11. Explain permitted disparity and "cross tested" or "rate group" methods of allocating contributions. How are these methods being used and why?
12. What happens if a plan terminates? How is that done? Does it depend on the type of Plan? What if it is underfunded? What is being done to lessen the risk when a plan terminates?

