



# WRMarketplace

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**TOPIC: Better Be Clear: Saying What You Mean in Benefit Plan Summaries.**

**MARKET TREND:** Lack of clarity in a benefit plan summary description may be construed against the sponsoring employer, meaning these employers must use extraordinary care in developing summaries.

**SYNOPSIS:** Benefit plans run the risk of exposing themselves to liability for benefits to ineligible participants when the summary plan description does not adequately apprise participants of the bases for eligibility and grounds for denial of benefits.

**TAKE AWAYS:** An insufficient description of plan elements can create unanticipated liability for benefits if the plan sponsor does not take care to incorporate all important rights and restrictions into the summary plan description. Regardless of what the actual plan terms require, a participant may be able to bring a claim for equitable relief when the summary plan description and plan governing documents conflict in their explanation or interpretation of conditions necessary for receiving plan benefits. The burden is on plan sponsors to ensure consistency in their plan summaries and governing documents.

**MAJOR REFERENCE:** *Pearce v. Chrysler Group, LLC Pension Plan, No. 13-2374 (6<sup>th</sup> Circuit) (June 18, 2015).*

Employee benefit plans comprise a variety of legal and administrative forms that can be long, full of technical jargon, and confusing to plan participants. ERISA § 102 requires that a plan have a summary plan description (“SPD”) that sets forth the key elements of the plan in participant-friendly, conversational language. But the challenge plan sponsors often encounter is translating the extensive terms of a program into a concise, readable document. Unfortunately, as only hindsight is always 20/20, it may be difficult for an employer to be certain that a SPD provides sufficient clarity for participants until a question or misunderstanding arises.

The Sixth Circuit recently issued an opinion demonstrating the pitfalls that can exist for plans that do not carefully prepare appropriate language for their documents.

*Pearce v. Chrysler Group, LLC Pension Plan*<sup>1</sup>

The plaintiff, Randy Pearce, had sued to receive supplemental retirement benefits from Chrysler Group's pension plan (the "**Plan**," which was subject to ERISA). Pearce had worked at a Chrysler manufacturing plant for more than 33 years, potentially entitling him to "30-and-out" benefits, designed to provide additional assistance to early retirees while waiting for Social Security benefits to kick in. Chrysler had offered Pearce and other employees a buyout package leading up to the company's bankruptcy that was in addition to the normal Plan benefits. As a way to help employees decide whether to accept the buyout offer, each was given a pension statement outlining their current Plan benefits, which included a notice to consult the SPD for more details.

Based on his belief that he was eligible for 30-and-out benefits, Pearce declined the buyout offer; Chrysler terminated him the same day for alleged improper use of company vehicles. When Pearce applied for his pension benefits, the benefit manager informed him he was not eligible for 30-and-out because the Plan terms expressly preclude a terminated employee from eligibility. Pearce sought administrative review, and when that was denied, he brought suit and eventually included a claim for equitable relief. The district court dismissed all of his claims, and Pearce appealed.

The Sixth Circuit began its analysis of the issue by concentrating on the differences between the SPD and Plan document. The appeals court noted that the SPD specifically cautioned that any conflicting language between the SPD and Plan document was to be construed in favor of the Plan document. In its discussion of early retirement eligibility, the SPD stated that an employee could qualify by meeting the conditions of both more than 10 years of service and more than 85 points of age/credited service. The SPD section dealing with 30-and-out supplemental benefits stated that an employee did not have to be actively employed at retirement in order to maintain eligibility as long as pension benefits began within 5 years of the employee's last day of work. In contrast, the Plan document explained that eligibility for the supplement did not exist for terminated participants whose employment ceased prior to their retirement.

In reviewing the participant's claim for straight monetary damages, the Sixth Circuit noted that "the most important consideration in construing a plan 'is the language of the plan itself as known by the employees, or as the employees should have known.'"<sup>2</sup> This essentially narrows the court's focus to consideration of how a reasonable participant would understand plan language. ERISA's SPD requirement states that the document "shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan."<sup>3</sup> The court held that the Plan document terms unambiguously preclude a terminated employee from being eligible for early retirement supplement. The court noted that SPDs, while an important document for participants, only convey information about the plan and do not constitute the terms of the plan. Thus, the Plan provisions precluded Pearce, as a participant, from being entitled to monetary relief.

However, the court then continued its analysis under ERISA § 502(a)(3), which allows a participant's claim for equitable relief when there is a material conflict between a SPD and a plan document. Importantly, the court considered what has to be included in the SPD, which encompasses:

- Eligibility for participation and benefits;
- Description of what benefits cannot be forfeited; and

- Explanation of circumstances that can cause disqualification, ineligibility, or denial of benefits.

The court held that a conflict between a SPD and a plan document occurs when the SPD “misleads or fails to state additional requirements contained in the plan document.” In the *Pearce* case, the court determined that the SPD omitted key information otherwise contained in the Plan, since the SPD did not mention that eligibility for 30-and-out was contingent upon employment status at the time of retirement. Thus, a casual reading of the SPD left the impression to Pearce and other participants that access to early retirement benefits simply hinged on meeting the age/service requirements and receipt of benefits within five years of retirement, and not to his being employed immediately prior to his retirement. According to the court, this difference in how the two documents treated retirement eligibility requirements caused a material conflict to exist. Relying on the rule that material limitations on a participant’s rights are required to be included in the SPD, and a participant has the right to seek equitable relief in such a circumstance even when a plan document clearly prevents eligibility, the court remanded the case for the lower court to determine if any form of equitable relief was appropriate for Pearce.

### ***Crafting the Plan Summary***

Congress intended SPDs to provide clear, simple, complete descriptions of plan benefits so as to remove the burden from participants of knowing and understanding every item in the lengthy, technical legal document underlying the actual plan. But attempts to simplify the terms of the plan document in the SPD can backfire if the required summary omits important parts of how the plan operates or leaves a mistaken impression as to eligibility or plan administration, which can make the balance between simplification and accuracy difficult to achieve. Thus, the plan sponsor has a heavy burden in translating all essential plan provisions into an accessible summary that will properly inform participants of their rights and obligations. In addition, plan sponsors should take care to amend their SPDs when they modify their plan documents to diminish the likelihood that discrepancies between the documents will arise.

### ***TAKE AWAYS***

An insufficient description of plan elements can create unanticipated liability for benefits if the plan sponsor does not take care to incorporate all important rights and restrictions into the summary plan description. Regardless of what the actual plan terms require, a participant may be able to bring a claim for equitable relief when the summary plan description and plan governing documents conflict in their explanation or interpretation of conditions necessary for receiving plan benefits. The burden is on plan sponsors to ensure consistency in their plan summaries and governing documents.

### ***NOTES***

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<sup>1</sup> No. 13-2374 (6<sup>th</sup> Circuit) (decision filed June 18, 2015).

<sup>2</sup> Citing *Kolkowski v. Goodrich Corp.*, 448 F.3d 843, 850 (6<sup>th</sup> Cir. 2006).

<sup>3</sup> ERISA § 102(a).

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