OCTOBER 2003

news

sackers extra

Early Retirement – Can Consent be Withheld?

As a method of controlling costs in defined benefit schemes, some employers/trustees are looking afresh at the provision of early retirement pensions. Scheme rules commonly allow members to retire early upon reaching a minimum age (often 50), but such pensions can be costly because they are paid earlier and over a longer period of time. Here we outline some issues to consider before adopting a policy to refuse early retirements.

Early retirement

Who has power to consent?

- Different considerations apply depending upon whose consent (employer or trustees) is required to early retirement.
- If members have an **entitlement** to take their benefits early, neither the employer nor the trustees can refuse a member's request, however expensive.
- Thus, the scheme rules and booklet (and any other promises made to members) need to be carefully checked.

If trustees' consent required

Some key considerations...

- Trustees must act to safeguard the financial interests of all scheme members (particularly for past service).
- There may be circumstances where trustees feel it is necessary to withhold consent in fairness to other members.
- But they should avoid penalising an individual member unnecessarily.

Fairness to members

When might trustees withhold consent?

- If trustees have grave concerns about the scheme's funding position or the employer's ability to continue meeting the ongoing contribution costs.
- Where the winding-up of the scheme is imminent or the employer's insolvency is a real possibility.

NB: Withholding consent may prevent so-called "priority drift" - namely, members retiring early immediately before a wind up and jumping up the priority order (as pensioners currently enjoy the greatest protection).

SACKER & PARTNERS

Other funding options

Trustees' alternatives?

- Trustees could ask the employer for additional contributions to fund the cost of early retirements, either on a one-off or a general basis.
- Early retirement reduction factors could also be reviewed to ensure that they are genuinely "cost neutral" to the scheme.

Employer's role

Relevant factors…

- The employer must exercise its powers in "good faith".
- Members may have an expectation that they can retire early on pension if the employer has never before refused consent.
- Principles of "custom and practice" may have elevated this into a legal right.

Incapacity pensions

Treated in the same way?

- If incapacity pensions are subject to employer and/or trustee consent, similar considerations will apply to those outlined above.
- However, the Pensions Ombudsman is unlikely to look kindly upon a refusal to pay such pensions for reasons which are unconnected with a member's health (unless the rules permit this).
- The case for withholding consent to an incapacity pension on cost grounds would therefore need to be particularly strong.

Risks of refusal

The mains ones…

- A member may well bring a complaint which could lead eventually to the Pensions Ombudsman.
- To reduce this risk, trustees/employers should explore all alternative options fully, follow a proper decision-making process, and communicate any change in early retirement practice effectively to members.
- Any "refusal policy" should also be closely monitored in case the funding position of the scheme improves.

This Newsletter is one of a series produced by our "Schemes in Transition Unit" (SITU) established specifically to assist clients in the process of changing pension provision. If you would like further information on early retirements, please contact Jane Kola or Helen Ball.

Jane Kola Partner jane.kola@sacker-partners.co.uk
Helen Ball Solicitor helen.ball@sacker-partners.co.uk

SACKER & PARTNERS

Solicitors specialising in pensions law

29 Ludgate Hill
London EC4M 7NX
Tel 020 7329 6699
Fax 020 7248 0552

enquiries@sacker-partners.co.uk
www.sacker-partners.co.uk