

PARTICIPANTS MUST REPAY EXCESS BENEFITS THEY RECEIVED

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Practices & Industries

Employee Benefits

DAK Americas LLC (DAK) decided to close one of its work locations. In connection with the closing, DAK amended its defined benefit plan to add an additional benefit option to be available for those participants whose employment terminated due to the plant closure. The amendment provided for an unsubsidized lump-sum early retirement option. As drafted, the lump sum benefit was to be calculated based on the benefit at the participant's normal retirement date. Transamerica Retirement Solutions Corporation prepared calculations of the lump sum benefit amounts. These calculations were in error because they calculated the benefit at early retirement which provided for a subsidized benefit. The error was discovered two months after the initial calculations were provided, and less than a month and a half after the participants received the incorrect lump sum distributions. Participants that received the incorrect information and incorrect benefit payments, were informed about the mistake and were offered the option to return the incorrect amount and to choose annuity options benefits, either at that time or in the future. Some of the participants did not return the disputed funds and did not elect to receive an annuity currently or in the future. The retirement plan filed suit to recover these excess amounts. The participants filed counter claims to retain the amounts alleging breach of fiduciary duties, constructive fraud, and equitable estoppel. The Court of Appeals for the Fourth Circuit confirmed that the terms of the plan amendment did not provide that calculation of the lump-sum option includes the subsidized early retirement benefit. The Fourth Circuit upheld the lower court's decision for summary judgement in favor of the plan against all but one of the 15 plaintiffs. One plaintiff alleged that he had conversations regarding the calculations and was advised that his lump sum would be equal to a non-reduced early retirement benefit and, relying on the alleged misrepresentation, the participant declined an offered job at another facility. For this participant, the Circuit Court remanded the claim to the district court for further proceedings on that participant's claim for surcharge as a remedy to retain all funds. *Ret. Comm. of DAK Ams. LLC v. Brewer* (4th Cir. 2017).