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Employee groups sue their companies over management of retirement funds

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Easy as A-B-C. 1-2-3. 401(k)?

For millions of Americans, 401(k)s - the popular savings plans that allow employees to save for retirement through tax-deferred contributions, which are matched by some employers - are their first introduction to investing.

Poured into mutual funds and their employers' stock, these 401(k) assets have grown in importance in recent years, supplementing the traditional Social Security safety net and sometimes replacing company pension plans.

Workers have parked $1.7 trillion in 401(k) accounts - more than five times the $385 billion just a decade ago, according to the Profit Sharing/40 l(k) Council of America in Chicago.

Sounds like a win-win situation: such plans are an additional perk companies can offer employees, and workers can take an active role in planning for their future.

"The plans have grown by leaps and bounds," said Dan Riesenberg, an employee benefits lawyer in the Luce Forward Hamilton Scripps law firm in San Diego. "Employees have gotten much more interested in the stock market and retirement plan investments. And employers want employees to take more responsibility."

Problem is, people just learning about investments through 401 (k)s could get burned when forced to make decisions on issues that require them to be experts in retirement law.

That's why under the federal Employee Retirement Income Security Act, companies must operate their 401(k) plan with an exclusive eye toward benefiting participants, from prudently managing the assets to providing information in a timely, comprehensible fashion.

Three recent lawsuits filed by the Washington D.C.-based Sprenger & Lang law firm highlight the potential conflicts between workers and employers who are entrusted to manage their retirement savings accounts.

Last week, a former vice president of New York Life Insurance Co. charged that the firm improperly managed its employees' retirement savings accounts. The class action suit alleges the company poured those assets into its institutional mutual fund business - mediocre funds that resulted in the loss of millions of dollars to employee retirement accounts.

In April, 18 former and current employees of SBC Communications, the parent company of Pacific

Bell, charged that SBC lost $1.15 billion of its employees' retirement funds when it sold off 11 million shares held in 401(k) accounts of AirTouch Communications Inc., the high-flying mobile phone unit that the telephone company spun off in 1994.

Last year, employees at Charlotte, N.C.-based First Union Bank

sued the institution, claiming that it restricted their investment choices to the funds that it controls rather than better-performing, lower-fee funds offered by competing companies.

The companies named in all three lawsuits deny the allegations.

"There's an irony here. Companies argue that 401(k)s are empowering workers, helping them save for themselves," said Karen Ferguson, director of the Pension Rights Center, a consumer advocacy group in Washington, D.C. " But now that they (employees) are told they're in charge, they want to make sure they have a say."

These cases could have a major impact on the way companies must convey changes to retirement plans and inform employees of all their options.

"It could be made very clear in the law that employers have a lot greater duty to communicate," said lawyer Fred Reish, an employee benefits expert at Reish & Luftman, a law firm in Los Angeles County.

A central issue in the SBC case is whether the company gave clear, timely and informative notice to plan participants.

After SBC acquired Pac Bell in 1997, the company automatically converted, or "mapped," Pac Bell shares into SBC stock, a common practice of acquiring companies.

"The acquiring company usually tries to integrate employees and assets into their workforce," said David Wray, president of Profit Sharing/40 l(k) Council of America, a trade group of companies that offer such plans. "The idea here is to bring new people into existing plans. It's typical."

What's come under fire is how SBC dealt with the AirTouch portion of the retirement portfolio and communicated those changes to employees.

The suit alleges that SBC misled its plan participants by failing to disclose the option that would have allowed them to keep all or some of their lucrative AirTouch stock.

Understanding the SBC notice sent to employees would "take a (retirement law) expert and mind-reader," said Eli Gottesdiener, lead attorney for the plaintiffs. "The relationship should not have been adversarial. It should have been like a parent to a child, going out of the way to explain."

The suit alleges that the lack of information helped ensure that plan participants would convert their AirTouch stock to SBC shares, boosting the company's stock prices - a move motivated by corporate gain rather than employee interests.

"This was a big part of my retirement. We can't live on pensions, that's for sure," said Darlene Haney, 55, of Simi Valley, a retired communications technician and plaintiff in a separate but related suit against SBC. "This is definite

ly going to hurt."

SBC, in a statement, denied those allegations. Officials said that the AirTouch sell-off brought Pac Bell retirement plans in line with their company policy: No SBC savings plans should include direct stock ownership in any company not related to SBC.

Yet in a letter obtained by The Examiner, SBC savings plan administrator Gail Roberts informed an employee of the motive behind the company's sale of AirTouch stock: "SBC's merger with PTG (Pacific Telesis Group) did not change the competitive relationship between SBC and AirTouch. Consequently, it is inappropriate for SBC, in any way, to promote the stock of a competitor as part of a company-provided, employee benefit plan."

John Riley, 61, a retired Pac Bell event manager from San Mateo, said that SBC had assured employees that changes to their 401(k) accounts would be minimal after the merger. He would have fought

to keep his 304 AirTouch shares had he been better informed about his choices, he said.

"I did want to keep it. It was a much better growth prospect than either Pacific Telesis or SBC stock," said Riley, who figures he'd had have $25,000 more in his retirement plan if he'd kept AirTouch stock. "I felt I had lost out after Vodafone bought it."

SBC began selling the AirTouch shares on May 1, 1998, when mobile phone company AirTouch's shares were $52.25.

On June 28, 1999, as AirTouch was being acquired by Vodafone AirTouch PLC - after a bidding war with Bell Atlantic drove up stock prices - its shares reached $107.67. The lawsuit alleges that SBC "knew or should have known" about the pending takeover and should have waited to sell the shares at a higher price.

SBC declined to comment on its policy of when to buy and sell stock or otherwise make changes to the design of employees' 401(k) accounts.

At some other companies, such as Hewlett-Packard and Wells Fargo, a group of senior executives design the plan, which in turn may be reviewed by an external investment advisor.

Wells Fargo offers employees the option of investing in the bank's mutual funds as well as outside institutional funds, said Sally Welborn, vice president of corporate benefits.

"They (the Wells Fargo funds) are held to the same rigorous level of return as others," Welborn said.

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