

AMERICAN
CASEBOOK
SERIES

CASES AND MATERIALS ON
EMPLOYEE BENEFITS

Second Edition



Peter J. Wiedenbeck
Russell K. Osgood

WEST

CASES AND MATERIALS ON EMPLOYEE BENEFITS

Second Edition



By

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To Meg, Bryce, Jane, and Sally
—P JW

With gratitude to my family
—R KO

PREFACE

Much is at stake in the regulation of employee benefit plans. In 2010 the aggregate assets of qualified private retirement savings plans reached almost \$6.3 trillion, and that extraordinary figure excludes about \$2.6 trillion in assets of deferred compensation plans covering state and local government workers and \$1.3 trillion in federal government retirement plan assets. Employer spending on private health insurance (excluding Medicare Hospital Insurance payroll taxes) now exceeds \$500 billion, *annually*. In 2010, retirement and savings plan contributions constituted 3.5 percent of total compensation costs in private industry; in the same year employer-provided health insurance cost 7.5 percent of total compensation. (These amounts represented 4.9 and 10.6 percent of average wage and salary cost in 2010, respectively.) In 2012, 48 percent of all private industry workers were retirement plan participants (59 percent of full-time workers), while some 51 percent of private industry workers were covered by an employer- or union-sponsored group health care plan (64 percent of full-time workers).

Assets and liabilities of this magnitude attract the attention of corporate financial officers. In recent years employee benefit plans have figured prominently in many corporate restructurings (takeovers, reorganizations, and downsizings). Employer modifications of benefit programs, whether induced by competitive pressure or regulatory imperative, can affect the health and personal financial security of millions of Americans. And retirement policy has implications for the future vitality of the U.S. economy, as retirement plan assets are a major component of national savings.

This book is about employee benefit plan regulation. Two introductory chapters address the functions of saving in society and provide an overview of our employee benefit system, including ERISA's structure, goals, and coverage. Chapter 3 examines the normative income tax treatment of deferred compensation (so-called nonqualified deferred compensation) and contrasts that regime with the taxation of qualified deferred compensation, illuminating the source and extent of the public subsidy of saving through qualified retirement plans and individual retirement accounts. Chapters 4-10 examine qualified retirement plans comprehensively, taking up issues in the order that they typically present themselves to workers: participation, benefits, funding, investments, vesting, distributions, and plan termination. Chapters 11 and 12 turn to the disclosure and civil enforcement mechanisms of ERISA Title I, exploring

important issues which (like the topics of Chapters 2 and 7), are common to both pension welfare benefit plans.

The book is designed to be adaptable to either of two different approaches to the subject. Some instructors emphasize ERISA's labor law regulation of welfare and pension plans, while others teach courses that explore the tax law requirements applicable to qualified pension, profit-sharing, stock bonus, and annuity plans in depth. For a labor-law-focused course, most or all of the detailed examination of the tax law nondiscrimination and related rules (Chapter 4C-4D, Chapter 5B(2)-(4), Chapter 5C, Chapter 6D-6E) can be readily omitted, allowing more time to study ERISA's fiduciary, disclosure, and enforcement rules. For a tax-centric qualified plan course, more time would be devoted to Chapters 4-6, with the likely trade-off of abbreviated treatment of termination, disclosure, and civil enforcement (Chapters 10-12).

To reduce confusion, when citing ERISA the authors have consistently provided parallel references to the original section numbers of the statute and to its codification in title 29 of the United States Code, but parallel cites have not been inserted into judicial or administrative opinions. Textual omissions from cases and other reprinted material are indicated by an ellipsis (* * *). The deletion of citations and footnotes is not noted, but where footnotes in quoted material are retained, they bear their original numbers. Authors' footnotes are indicated by means of consecutive alphabetical references within each chapter.

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