

PENSION AND EMPLOYEE BENEFIT LAW

FIFTH EDITION

JOHN H. LANGBEIN

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PREFACE

The Fourth Edition saw an extensive revision in the organization of the book. This Fifth edition retains the structure put in place in that edition. This Fifth Edition reflects several significant statutory and regulatory changes, including the Pension Protection Act of 2006, the Worker, Retiree and Employer Recovery Act of 2008, relevant provisions of the American Recovery and Reinvestment Act of 2009, and final regulations under Section 409A of the Internal Revenue Code. The book also adds coverage of several Supreme Court decisions on issues relating to standard of review, remedies, and spousal benefits. Many recent lower court decisions are also examined.

This Fifth Edition makes significant changes in the authorship of this text. Professor Bruce A. Wolk, who bore the major responsibility for our coverage of the law of pension taxation throughout the first four editions, took no part in the preparation of this edition. Professor David Pratt, a prominent scholar in the employee benefits field, joins us on this edition. Professor Pratt has taken responsibility for updating the first three chapters, addressing the origins of the pension system and of ERISA and plan typology, as well as the chapters addressing the law of pension taxation (Chapters 8–11). Professor Stabile has been primarily responsible for Chapters 4–7, addressing substantive areas of ERISA regulations other than the tax and fiduciary issues, as well as the chapters addressing ERISA litigation matters (Chapters 16–18). Professor Langbein has restricted his participation to the four chapters addressing ERISA fiduciary law (Chapters 12–15). He participated neither in the drafting nor review of the other chapters of this edition.

Coverage. Pension law is a vast field, full of minutiae that matter in practical settings but that do not invite curricular treatment in an introductory law school course. Our challenge in each edition has been to identify and present the topics of greatest importance and intellectual interest. We try to provide a solid grounding in the main areas of pension regulatory law, pension fiduciary law, and pension taxation, with an emphasis on structure and policy. We omit or provide only minimal coverage of the specialized law of multiemployer plans and the associated withdrawal liability scheme. We also do not explore the financial machinations that pass under the name of employee stock ownership plans (ESOPs).

It continues to be a challenge to make room for coverage of the extensive developments that have occurred in this field while keeping the book to a tolerable length. We continue to trim incessantly and hope that we have struck a sound balance between comprehensiveness and teachability.

Editing practices. In preparing these materials we continue in this edition to adhere to a set of editing conventions that we employed in past editions, which depart from customary legal scholarly practice in disclosing deletions from cases or other sources extracted in the book. Bluebook form requires ellipses for any omission. For teaching materials, however, the clutter of dots outweighs the gain in fidelity to the source. Accordingly, we have adhered to the casebook editing conventions developed by Geoffrey R. Stone et al. for their book *Constitutional Law* (6th ed. 2009, 1st ed. 1986). Thus, in editing judicial decisions (and other sources), we delete many citations of cases and other authorities and almost all footnotes, and we do so without disclosure tags like citations omitted. We do, of course, disclose when substantive material has been deleted from a case or other source. We use ellipses when a deletion occurs at the end of a paragraph, but otherwise, deletions are disclosed mostly by bracketing the word before or after the omission.

We believe that these practices, which largely suppress ellipses, make a coursebook easier for students to read. The standards of scholarly accuracy for identifying omissions are unnecessarily cumbersome for teaching materials. Brackets suffice to warn that there has been alteration. Obviously, users wishing to adhere to scholarly standards will need to return to the original texts.

Another editorial practice that should be noticed concerns the handling of citations to ERISA. As explained in Chapter 3, ERISA was enacted with its own section numbers, beginning with § 1. When codified in title 29 of the U.S. Code, ERISA's sections were renumbered, beginning with § 1001. ERISA lawyers use ERISA numbers, for example, in the widely used published editions of ERISA, in the practitioner services, and in commentary and scholarly writing. However, law clerks who polish up judicial opinions often use U.S. Code numbers. In this coursebook, we use only the ERISA numbers. When the original source gives only U.S. Code numbers, we substitute the ERISA numbers. When the original source employs parallel citations, we delete the U.S. Code reference.

Statute book and supplement. *Selected Sections: Pension and Employee Benefit Statutes and Regulations* supplements this casebook. Through the 2010 edition, the statutory volume has been prepared by Professor Wolk. Commencing with the 2011 edition, Professor Pratt will take responsibility for the volume.

As in past years, we expect that when later developments require, we will provide an annual supplement, to be published by Foundation Press.

Acknowledgements. We thank the many authors, journals, publishers, and other copyright holders who have granted us permission to reproduce excerpts from their work. We supply full citations to such material where it appears in this book. We carry forward from the previous edition the following acknowledgements to copyright holders who prefer particular forms of acknowledgement: for Nancy J. Altman, *Rethinking Retirement*

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January 2010

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