

Retirement Benefits | *Elizabeth Sales, J.D., L.L.M. in Taxation* |
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IDENTIFYING AND DIVIDING RETIREMENT BENEFITS

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Successfully Subpoena Benefit Information

- Request from the Participant (Husband or Wife) a list of employers where the Participant earned retirement benefits
- Request from the Participant the list of financial institutions which administer the retirement benefits
- Prepare subpoena to employers and financial institutions for information

Drafting Your Subpoena

- Subpoena should be worded broadly to include any retirement benefits earned during employment
- Many individuals accidentally do not disclose all of the names of their plans because they do not fully understand the types of retirement benefits they have
 - For example: many government employees are unaware that the Thrift Savings Plan (TSP) is separate from Civil Service Retirement System
 - Where there is a defined benefit plan, there is probably also a defined contribution plan

Sample Subpoena Description

Any and all account statements and documents related to the benefits for the employee [NAME](Social Security number XXX-XX-XXX) in any and all retirement plans sponsored by [NAME OF COMPANY] at anytime between [DATE OF HIRE] until the most current.

Documentation showing the dates of participation in any retirement plan(s) and the dates of employment.

Any and all statements which reflect a distribution(s), if any, made by the employee [NAME] from [DATE OF HIRE] including the distribution direction, any distribution rollover form for such distribution, and a copy of the distribution check, if any, showing to whom such distribution was made.

Documentation showing any beneficiary designation election or survivor benefit election.

Summary Plan Descriptions and Plan documents for every retirement plan that employee [NAME] participated in from [DATE OF HIRE] until current.

Understanding Benefit Information

- Sort benefit information by plan name. At the top of the benefit statement, there should be a plan name that normally includes the employer's name and the word "plan." Different benefits will normally be under a different plan name.
 - For example: AT&T Savings Plan is a defined contribution plan and contains different retirement benefits than the AT&T Pension Benefit Plan which is a defined benefit plan.
- Each plan should be addressed in the marital settlement agreement, so treat each plan separately. In addition, if you need to put a hold on benefits, the hold should be put on each plan separately.
- Benefit statements that show an accrued benefit expressed in a monthly payment at retirement are normally defined benefit plans. These may have a "cash out value," but that does not make the plan a defined contribution plan.

Common Pitfalls When Interpreting Benefit Statements

- Do not use the “return rate” percentage as the actual percentage for increase in assets because many financial institutions define the return rate as contributions and percentage increase
- Do not assume that the lump sum benefit listed for defined benefit plans is the current fair market value
 - Example: Benefit statement may list:
 - \$500 estimated monthly benefit if retire at 55,
 - \$700 estimated monthly benefit if retire at 59, or
 - \$100,000 lump sum benefit at 55
 - Present value of benefit is not \$100,000. To calculate present value, you must apply an assumed inflation rate, life expectancy, interest rate, and estimate other changes to benefits, then do a present value calculation for each individual payment.
 - CalPERS: Common pitfall is to look at benefit statement and see contributions valued at \$12,000. CalPERS benefits are composed of contributions and service credit, so this statement will not give you the full picture

QUESTIONS?

For More Information

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