

# The OKLAHOMAN

## Q&A WITH RENEE DEMOSS

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### **Benefit plans for retirees must be clear, understandable**

**Q: The U.S. 10th Circuit Court of Appeals recently ruled in a case involving the Employee Retirement Income Security Act (ERISA). What was this case?**

**A:** In *Fulghum v. Embarq Corp.*, the 10th Circuit considered the claims of telephone company retirees whose life and health insurance benefits had been reduced or eliminated by their former employers. The plaintiffs alleged they were entitled to vested lifetime benefits under the terms of their benefit plans, and also based on misrepresentations made to them by their employers. They filed claims for breach of contract and breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA).

**Q: What does ERISA say about an employer's duties in regard to changes in retirement benefits?**

**A:** Under ERISA, an employer is generally free to change, modify or terminate its welfare benefit plans for any reason at any time, unless the employer has contractually agreed to provide vested benefits, or, in certain circumstances, made oral representations that they will be provided. A contractual agreement is created by the incorporation of "clear and express language" promising vested benefits into a formal written ERISA plan, which can be done through a summary plan description.

**Q: How did the court rule on the ERISA claims?**

**A:** After reviewing the plan descriptions and applying general principles of contract construction, the court found the plans didn't contain clear and express language promising vested benefits on the breach of contract claims it considered. The plans either contained language that expressly reserved the employers' rights to change or terminate the described benefits, or they contained language that otherwise unambiguously contemplated future plan changes or terminations in a manner that could not reasonably be misinterpreted by the employees. The court also ruled, however, that the retirees could go forward on some of their claims for breach of fiduciary duty based on alleged misrepresentations and omissions of the employers.

**Q: What lessons should employers take from this case?**

**A:** Employers should try to ensure the language in their welfare benefit plans is clear and precise regarding all benefits the employer intends to provide, and is written so that employees can understand the benefits. Employers should be equally careful and precise when discussing plan benefit provisions with their employees.

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