

Pension and 401(k)/403(b) Plans

YOUR LEGAL RIGHTS

1. What is a pension plan?

Pension plans provide a continuous, fixed income after retirement. The amount of income is typically based both on your total years of employment and the wages earned during your final year of employment. Because you will know in advance the amount of your monthly benefit at retirement, pensions are referred to as “defined benefit” plans. Private and union pension plans typically do not require an employee contribution to the pension fund, while government pension plans usually do.

2. What is a 401(k) plan?

A 401(k) plan is not a pension or “defined benefit” plan. Instead, 401(k) plans are a type of “defined contribution” plan established by employers or unions for employees to contribute voluntarily to their own individual retirement accounts. Employers may match employee contributions, and if employers choose to contribute, they may do so either in cash or company stock. 401(k) plans are investment accounts as well as savings accounts. That is, 401(k) funds do not merely sit in an account and collect interest. Rather, an employee’s 401(k) funds only grow (or shrink) through investment decisions. Employees often have responsibility for making wise investments of the contributions in their 401(k) accounts, though employers may limit some investment options. The amount of money you will receive upon retirement will vary based on the amount of your contribution and the success of your investments.

3. What is a 403(b) plan?

A 403(b) plan is similar to a 401(k) plan (see above), but is provided to employees of non-profit organizations.

4. Must employers set up pension plans, 401(k) plans, or 403(b) plans?

No, but if your employer does set one up, it must follow government regulations.

5. What must I do to receive a pension?

You must have worked for the same employer or within the same union for a specified number of years for your benefits to become “vested” (meaning that the benefits become entirely yours). Once you are vested, you are entitled to your pension benefits, although you may have to wait to receive them until you reach the retirement age specified in your pension plan. If you die before your retirement age, your spouse and children under age 18 receive your benefits (usually 50%), unless your spouse has given up this right.

6. How do I find out how much my pension will pay?

You may request an Individual Benefit Statement once every year. Many employers automatically mail this statement to all covered employees every year.

7. If a new employer takes control of my pension plan, what happens to my years of work with my previous employer?

Your previous years of work count toward vesting if your new employer continues to maintain your previous employer's plan. The new employer might choose not to continue the plan.

8. How does a break in my employment affect my pension?

Special rules govern whether you lose credit for previous years' work. Those rules include several factors:

- If you were already vested prior to your break in employment, the years before and after the break must count toward calculating your pension benefits.
- If you were not already vested prior to your break in employment, a long break in employment may cause you to lose all your years before your break.

9. What counts as a break in my employment?

1. If you worked 1,000 hours or more in a year, that year normally will count toward vesting. (A full-time employee works about 2,080 hours a year.)
2. If you worked 501-999 hours in a year, that year normally will not count toward vesting. However, it also will not count as a "break in service."
3. If you worked fewer than 501 hours in a year, that year normally will not count toward vesting and in certain circumstances can result in losing credit for previous years of service toward vesting.

10. What steps can I take if I think my pension rights are being violated?

Step 1: Collect and Review Your Documents

Helpful documents to review will include your:

- Summary Plan Description (SPD), which explains how the pension plan works;
- Individual Benefit Statements;
- Separation papers; and
- Pay stubs.

If you are missing your Summary Plan Description or Individual Benefit statement, write to your “plan administrator” to request the missing documents. (The plan administrator is the person legally responsible for managing the plan and whose sole purpose is to provide benefits to the plan participants and beneficiaries. If you don’t know who your plan administrator is, then request the administrator’s contact information from your employer.) State that you are making your request under Section 104 of the Employee Retirement Income Security Act (ERISA). Include your full legal name, your Social Security number, date of birth, years worked, and your return address and phone number. Be sure to date the letter and send it certified mail with return receipt. Get this information for every pension plan under which you have been covered.

Step 2: Assess Your Situation

Try to answer the following questions:

- Which pension plan was in effect when you vested?
- Which pension plan(s) were in effect from the time you vested until you retired?
- When did the pension plan(s) terminate?
- Has the company changed owners? When? Who were the previous owners?

Step 3: Write, Then Call, Your Plan Administrator

Write to your plan administrator to request action on your pension problem and a written response within thirty days of the date she received the letter. State that you are making your request under Section 104 of the Employee Retirement Income Security Act (ERISA). Include your full legal name, your Social Security number, date of birth, years worked, and your return address and phone number. Be sure to date the letter and send it certified mail with return receipt. Follow up with a telephone call if you do not hear back within thirty days.

Step 4: File A Claim (If Necessary)

If your plan administrator does not satisfactorily address your pension problem, you may file a claim to have your problem formally assessed. Three kinds of claims may be filed – an internal administrative claim, a Department of Labor claim, or a federal lawsuit.

Benefits Owed: Should your pension problem deal with a dispute regarding the calculation of benefits you are owed, you must almost always file an internal administrative claim first. The Department of Labor can assist you on an informal basis with benefit claims. For instance, they can inform you of your rights and what procedures to follow. They might also be able to call your employer on your behalf and make a preliminary, informal inquiry into your claim.

Plan Problem: Should your pension problem involve a claim that the plan administrator is failing in her legal duties (for example, engaging in fraud), you may bring your pension claim directly to federal court or to the Department of Labor. If you file a claim with the Department of Labor, they may decide to sue on behalf of all plan participants. They may also decide not to sue. You do not need to file a claim with the Department of Labor before filing your own federal suit.

11. What should I expect to happen in a typical internal administrative process?

Your Summary Plan Description should explain the specifics of how the internal administrative process works. Typically, you file a written claim (including copies of any evidence) with your plan administrator or other designee. The administrator normally has 90 days to respond to your claim, and if you do not hear back from her after that time, you should consider your claim denied. You have a right to be informed, in writing, why your claim was denied. You also have the right to appeal a denied claim to the plan administrator within 60 days of receiving notice that your claim was denied. In your appeal you should submit any new information or evidence that addresses the weaknesses in your original claim (as communicated in the written explanation for why your original claim was denied). The plan administrator usually has 60 days to review your appeal. If your appeal is denied, the administrator must explain, in writing, the basis for her denying your appeal. At this point you may decide to sue in federal court.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

