

Plan Does Not Use the 25% Suspension Offset Rule, and Instead Offsets NRA benefit by 100% for Retiree's Overpayment due to Previous Disqualifying Employment

- Client received an unreduced disability pension benefit for nearly 10 years before NRA. Client engaged in disqualifying employment, and his pension was suspended. He was informed about the overpayment of approximately \$149,000 (includes interest) due to his disqualifying employment, and thought he could reapply for his benefit at NRA (65) and it will be reduced by 25% to recoup the overpaid funds.
- Client ceased the disqualifying employment, and called the plan about re-commencing his pension before his 65th birthday. He was told that they will withhold 100% of his benefit until they recover the entire overpayment, because the overpayment is so large and they do not anticipate recovering it in his lifetime.
- We submitted a claim for benefits on his behalf, and requested his pension be reinstated and offset by no more than 25% to recoup per 29 CFR 2530.203-3(b)(3).
- Client received and submitted benefit election forms in response to our claim. He was verbally told that his benefits would commence with a retroactive start date to 9/2016 (when he turned 65). However, when client later called to check status, then he was told he is ineligible for any benefits until 2038, when the overpayment would be paid in full.
- DOL EBSA investigator presently looking into why this plan has so many participants 65+ not in pay status. We connected with her about two clients with similar problem from this plan. She said that the plan's legal position is that the 25% offset rule only applies where prohibited employment was post age 65. They point to their plan section (below) in support. Recent email from EBSA investigator: "It may be several months until I get a response from our legal department about the position the Department will take on this issue."
- Note: we have a different, but similar case with this plan, where the client was overpaid due to ineligibility because of earnings while receiving disability pension. That client past RMD, and still not in pay status.

Sheet Metal Workers' National Pension Fund Plan Document

Section 8.06 Suspension of Benefits

(g) Resumption of Benefit Payments

(2) Overpayments attributable to payments made for any month or months for which the Participant had worked in Disqualifying Employment shall be deducted from pension payments otherwise paid or payable subsequent to the period of suspension. **A deduction from a monthly benefit for a month in which the Participant had worked in Disqualifying Employment (within the meaning of Section 8.06(d)(2)) after he attained Normal Retirement Age shall not exceed 25 percent of the pension amount (before deduction), except for the first pension payment made upon resumption after a suspension. The foregoing 25 percent limitation shall not apply to deductions for overpayments attributable to payments made for any month or months for which the Participant had worked in Disqualifying Employment (within the meaning of Section 8.06(d)(1)) before he attained Normal Retirement Age; provided, that the deduction does not affect the Participant's entitlement to the actuarial equivalent of his Normal Retirement Benefit after attainment of Normal Retirement Age (taking into account the payments made before his attainment of Normal Retirement Age).** If a Pensioner dies before recoupment of

overpayments has been completed, deductions shall be made from the benefits payable to his Beneficiary, subject to the 25 percent limitation on the rate of deduction with respect to work in Disqualifying Employment (as defined in 8.06(d)(2)) after the Participant attained Normal Retirement Age.

Relevant Law

29 CFR 2530.203-3(b)(3): A plan which provides for the permanent withholding of benefits may deduct from benefit payments to be made by the plan payments previously made by the plan during those calendar months or pay periods in which the employee was employed in section 203(a)(3)(B) service, Provided, That such deduction or offset does not exceed in any one month 25 percent of that month's total benefit payment which would have been due but for the offset (excluding the initial payment described in paragraph (b)(2) of this section, which may be subject to offset without limitation).