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Firms Must Tell All on Retirement

From Associated Press:

SAN FRANCISCO--A company that is seriously considering improvements in its retirement plan must volunteer that information to employees who are considering retirement, a federal appeals court ruled Monday. In a pair of 2-1 decisions, the U.S. 9th Circuit Court of Appeals said an employer's duty to keep employees informed of their retirement options includes not only answering questions truthfully but also disclosing information without being asked.

The court reinstated suits by an Exxon employee and six Pacific Bell employees who said they would have delayed retirement if they'd been told the company was considering a sweetened retirement package. Their suits seek participation in the deals that were offered later.

Since 1996, several appellate courts have ruled that companies must disclose retirement improvements they were "seriously considering," a term that covers discussion by senior management with authority to implement the change. No previous appellate court had required a company to volunteer that information. That's an important step because, "If you don't know what's going on, how do you know to ask a question?" said Thomas Moukawsher, lawyer for the former Exxon employee. Moukawsher said his client, who worked on an oil-drilling rig off the Southern California coast, was "completely reliant on the chain of communications that the company had."

James Severson, a lawyer for Exxon, said the ruling would create "fertile ground for lawyers and litigants" and confusion for employers.

The Exxon employee, Ernest Bins, had planned to retire on Jan. 1, 1996, but heard rumors that the company was planning to add a cash payment to its normal pension payout. Bins delayed his retirement date for a month and questioned several supervisors through late December, but they told him they knew nothing of any such plan.

In fact, Exxon had been studying the benefit increase as an incentive to early retirement for several months, the court said. The benefit would have been worth \$35,000 or \$40,000 to Bins, his lawyer said.