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Firms' Buyout Obligations

An employer considering offering an early-retirement plan can't actively mis-lead employees who ask about it, a federal appeals court has held.

While the employer need not disclose internal deliberations it must "speak truthfully" when questioned by its workers, the three-judge panel of the Second U.S. Circuit Court of Appeals in New York found.

The decision, which follows similar findings by two other appeals courts, will be significant as companies continue to offer various forms of employee buyouts in order to cut costs. But it doesn't address whether an employer has a duty to disclose future benefit increases when not specifically asked about them.

The specific case involves James F. Mullins, a chemical operator at Pfizer Inc. '5 Groton, Conn., manufacturing plant who took early retirement on April 1, 1990, after 34 years with the pharmaceutical concern. Thomas G. Moukawsher, Mr.

Mullins's attorney, said plant officials assured employees that no enhanced severance packages were planned at a time when internal memos revealed that buyouts were being considered.

Six weeks later, an enhanced buyout plan was offered, and Mr. Mullins subsequently filed suit, contending that Pfizer had misled him. He alleged violations of Erisa, the federal statute covering employee benefits, and state law. The court's decision means his case can proceed to trial.

The trial court found the company's conduct "disturbing." But Pfizer said in a statement that the "facts will support its position."

One attorney specializing in Erisa said most companies informally tell employees considering retirement to wait if company officials are aware a buyout is under consideration. Most "bend over backwards to tell their employees," he said.

(Mullins vs Pfizer Inc., Second Circuit, 93-7985)