

# San Francisco Chronicle

## An Employer's Legal Obligation to Disclose

Oh, that buyout: Premature quitters seek to prosper

Reynolds Holding

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Talk about bad timing.

Machinist Dwight Matthews spent more than 22 years torquing life into tired engines and spluttering pumps at the Chevron oil refinery in Richmond. Four years ago, still only 53, he thought of calling it a career.

He had earned close to full retirement benefits. He wanted time with his daughter and granddaughter. And the grapevine whispered of staff cuts bringing lucrative payments to employees willing to leave their jobs early.

But the grapevine, it seemed, was misinformed. Everyone from the refinery manager to the head of personnel answered Matthews' persistent inquiries about possible buyouts with unambiguous denials.

So Matthews, seeing no reason to stay longer, walked out the refinery gates for the last time on May 1, 1999.

And wouldn't you know?

About three weeks later, Chevron offered buyouts that would have cushioned Matthews' retirement with more than a year's salary.

In Matthews' shoes, most of us would have cursed our luck and gone on with our lives. But Matthews, and more than a dozen co-workers who say they were similarly deceived, fought back.

In a lawsuit tried last week in San Francisco federal court, they contend that Chevron breached its legal duty to give employees complete and honest information about retirement benefits. They contend that refinery managers knew the buyout was coming and, at minimum, should have said so when asked.

It is the same duty Enron may have breached by not disclosing its precarious finances while telling workers to lard their 401(k) plans with company stock. Legally, the

Chevron workers may stand in an even better position.

The judge hasn't decided yet, but two years ago the U.S. Court of Appeals in San Francisco ruled for employees in a similar case against Exxon.

"This happens a lot," says attorney Thomas Moukawsher, who won the Exxon case and represents the Chevron employees, "because companies save a bundle by fooling people into leaving just before a (buyout) package kicks in."

Chevron attorneys did not respond to a request for comment.

But according to court documents, Chevron, and particularly its Richmond refinery, were struggling financially in late 1998. On Dec. 15, then-Chairman Ken Derr ordered \$500 million sliced from operating expenses in a single year.

"It was a no-brainer that they were going to cut people," said Matthews. On Feb. 23, 1999, the company adopted a new plan for paying workers to retire early. Three days later, executives discussed the plan's application to refineries, a conversation that Moukawsher says proves the buyout was under "serious consideration," the legal trigger for the duty to disclose.

About the same time, Matthews and other employees began asking managers about the rumored buyouts. But the Richmond refinery head announced that no buyouts would be offered, and his staff toed the company line.

In March, a manager told Matthews that the refinery would reduce staff through regular retirements only. In April, a personnel manager did not return Matthews' repeated phone calls about possible retirement incentives. His co-workers met with similar results.

Convinced that the buyout "just wasn't going to happen," Matthews says, he moved up his scheduled retirement from June 30 to May 1.

On May 28, Chevron announced the retirement package.

For Matthews, it would have totaled about \$70,000. For Ernest Oliver, a 30-year employee who retired on May 14, or Everett Miller, a 29-year employee who retired on April 30, or any of several other workers told there would be no buyouts, it could have been more.

Even if they win their lawsuit, a recent U.S. Supreme Court decision casts doubt on how much money the employees can recover. But the challenge alone offers further evidence that, in the age of Enron, workers have put a name to fuzzy corporate ethics.

"What these people told us," says Matthews, "were flat-out lies."