

# Employees Can Sue to Rescind Early-Retirement Offers

A federal district court judge in Texas recently ruled that an employee may proceed with a lawsuit claiming that he was entitled to rescind his early retirement because his employer misrepresented his pension benefits.

The judge rejected the employer's argument that rescission of the employee's early retirement was not an "equitable" remedy allowed under the Employee Retirement Income Security Act (ERISA).

**The case:** Verizon employee Michael Frawley accepted an early retirement offer in May 2003 that came with a lump-sum payment of more than \$560,000. Two years later, the company informed Frawley that it erred in calculating his pension benefits to the tune of a \$240,000 overpayment. Frawley refused to return the \$240,000, and the plan's benefit committee filed a lawsuit to recover the overpayment.

Frawley filed counterclaims, requesting that he be permitted to rescind his early retirement. He also requested a reinstatement to full retirement benefits effective as of his normal retirement date.

The court denied Verizon's request to dismiss Frawley's claims, saying that many courts have acknowledged that reinstatement of benefits is appropriate equitable relief under ERISA Section 502(a)(3).

According to the court, "Frawley is seeking to be restored to the same position he would have been in had the misrepresentations not been made to him, in which case he would not have elected to retire until a normal retirement age." (*Verizon Employee Benefits Comm. v. Frawley*, No. 3:05-CV-2105-P, U.S. District Court for the Northern District of Texas, 2006)