

PENSION AND RETIREMENT PLANS

This publication is an adapted excerpt from the Handbook for Washington Seniors: Legal Rights and Resources. Visit www.legalvoice.org/seniors to buy a print copy or download for free.



www.legalvoice.org

This publication is about how some pension plans and retirement plans work. It also covers your basic rights under most plans. The information here should only be used as a starting point. Be aware that laws can change. You should always talk to a financial advisor before making any financial decisions.

Planning for Retirement

Generally, if you want to keep the same standard of living after you retire, you will need almost the same amount of money each month as you did when you were working (estimate 70-90%). Social Security pays about 40% of what you earned before retirement. The rest of your retirement income should come from pension or retirement plans (both called “retirement plans”), personal savings, and/or other investments. Considering that the average American spends 20 years in retirement, it is important to think about what your retirement expenses will likely be and to make a financial plan.

For information on planning for retirement or the amount social security will pay you, see Resources at the end of this publication.

Employer-Sponsored Plans

Many employers offer retirement plans to their employees. These plans must follow a federal law called the Employee Retirement Income Security Act (ERISA), which sets minimum standards for employee health and retirement benefit plans.

A few retirement plans do not have to follow ERISA. Those plans are special insurance-deferred compensation plans (like life insurance), government plans, and most tax-exempt organization (non-profits, co-ops, religious associations, etc.) plans.

What Kinds of Plans Might an Employer Have?

Generally, a private company will have either a defined benefit plan or a defined contribution plan.

With a defined benefit plan, you will know exactly how much you will be paid when you retire; it is based on your salary, age, and the number of years you worked. For example, pensions and annuities are defined benefit plans.

With a defined contribution plan, you choose how much money to contribute, and often your employer will contribute as well. That money is then invested in stocks, mutual funds, etc. For example, 401(k)s and profit-sharing plans are defined contribution plans. The money you get from it depends on how much money was put in and the gains or losses of the investments.

If you work for the government or a non-profit, other plans may be available. See the listings under [Other Retirement Plans...](#) in Resources at the end of this publication.

Can I Participate in My Employer's Plan and, If So, When?

If your employer has a plan, you may be able to participate in it depending on several factors, like how long you have worked for the employer. Different workers sometimes have different plans. You can check with the plan administrator for details about your employer's plans.

When Do I Get the Money from My Plan?

If you contribute money to your plan, you can take out all the money currently in the plan at any time. However, if your employer makes contributions as well, you usually have to work for that employer for a certain amount of time before that money is considered yours. This is known as "vesting." Once you work for your employer for the required time, your benefits vest and become yours.

Usually, you must also be a certain age before you can take money from the plan. Sometimes you can take out money early, but you will pay a tax penalty. Review your employer's plan documents for more details.

Is My Retirement Plan from My Employer Protected?

Yes, your retirement plan is protected by your employment contract and state and federal law. You also have some legal protection if something bad happens to your employer-sponsored retirement plan. For example, if your employer terminates your plan while you are still working, your benefits could become fully vested automatically. Your employer cannot take vested benefits away from you.

For defined benefit plans, the Pension Benefit Guaranty Corporation (PBGC) guarantees payment of your vested benefits up to a certain amount. PBGC does not cover defined contribution plans, but you may have the right to sue if you think the company managing the plan did not act in your best interest.

Your employer cannot fire or punish you to avoid paying a plan benefit. Your employer cannot punish you for exercising your ERISA rights or for giving information or testimony in an investigation or legal proceeding related to ERISA. If your employer breaks these rules, talk to a lawyer. See the listings under [Legal Help](#) in Resources at the end of this publication, and the "Legal Help" chapter of the *Handbook for Washington Seniors* for information about finding a lawyer.

What If I Take a Break from Working?

Vested benefits are never lost by taking a break from your job. For non-vested benefits, if your break is longer than 5 years or longer than the time you worked for your employer before the break (whichever is greater), then you will not be able to count the time before the break for purposes of vesting.

That means you will have to start over on counting work years before your benefits vest again. If your break is shorter, you can count the time before your break toward your unvested benefits, which means faster vesting on your return to work.

Can I Appeal My Employer's Denial of Pension Benefits?

Your plan must have a written procedure for making a claim for benefits and for appealing any denial. The summary should have a description of these procedures. By law you must have a certain amount of time to appeal and be given a decision about a denial in writing. If you disagree with a final decision denying you benefits, talk to a lawyer. See the listings under [Legal Help](#) in Resources at the end of this publication, and the "Legal Help" chapter of the *Handbook for Washington Seniors* for information about finding a lawyer.

Other Information

What Other Retirement Plans Are Available?

Even if your employer does not have a retirement plan, or if you are self-employed, there are other ways to save for retirement. An Individual Retirement Account (IRA) is one way. An IRA is an account that you set up with a financial institution, like a bank. Traditional and Roth IRAs are two common types of IRA accounts. See the listings under [Other Retirement Plans...](#) in Resources at the end of this publication.

If you are self-employed, two additional plans are available to you: Simplified Employee Pension Plan (SEP), and Keogh Plans. Talk to a financial advisor for more information on both of these plans.

How Much Can I Contribute to My Plan?

You can contribute as much money as you want to your retirement plan, but there is a limit on how much you can contribute without paying tax on the contribution.

These limits are generally relaxed for plan participants who are age 50 or older. This allows participants to make 'catch-up contributions' to their retirement plans to increase their savings just before retirement. For more information on catch-up contributions and the tax-free limits, see the listing for the Internal Revenue Service (IRS) under [Retirement Investments Information](#) in the Resources at the end of this publication.

What Information Can I Get About My Plan?

The plan administrator must give you a copy of the Summary Plan Description for free. The summary gives you information about your retirement benefits, like when you can

start the plan, how you calculate benefits, when the money can be taken out, how you will be paid, and how you can file a claim. The plan administrator must tell you about any changes to the plan free of charge.

Once you start a retirement plan, you should get a free summary of the plan's annual report every year. Also, if you ask for it, the plan administrator must give you a free statement once a year explaining the earliest date you can take out money. If you lose any of these documents or you want more information, ask the plan administrator for it in writing. You have the right to a response within 30 days.

Will the Money I Get from My IRA or Employer's Plan Be Taxed?

Yes, but when and how much it will be taxed depends on several factors, such as the type of plan and how you contribute to it. For example, with a traditional IRA or 401(k), you pay taxes on the money when you take it out. With a Roth IRA or Roth 401(k), you pay taxes on the money when you put it in, but no taxes on the interest or investment gains.

Certain tax deductions or credits may be available for the money you contribute to an IRA. If you file a joint income tax return with your spouse, you may be able to get these tax benefits for your spouse too, even if he or she doesn't work.

If you must pay tax on the income you get from an IRA or your employer's plan, or if an exemption applies to the income, your plan administrator will send you an IRS form at tax time.

For help filing your federal incomes taxes with retirement income, see the listings under [Legal Help](#) in Resources at the end of this publication. Also, see the "Federal Taxes" section of the "Personal Finances" chapter in the *Handbook for Washington Seniors*.

It is worth thinking about taxes as you plan for retirement. To learn more about how taxes work with retirement plans, talk to your financial advisor or plan administrator. Also see the listings under [Preparing for Retirement](#) in Resources at the end of this publication. MyRetirementPaycheck.org in particular has a good, basic overview of the different types of retirement accounts, including tax information.

How Do I Make Changes to My Retirement Plan?

To make changes to your retirement plan, such as changing a beneficiary, contact the plan administrator. You should also make sure that your plan documents are up to date and correct when you change your will or if family circumstances change.

Can Creditors Get Any of My Retirement Plan Funds?

In general, your retirement plan is safe from claims by creditors.

Do Spouses/Ex-Spouses Have Rights to Each Other's Retirement Plan Funds?

Spouses may have rights to some of each other's pension benefits. It depends on the plan and whether you or your spouse dies before or after payments are scheduled to begin. Check the plan's summary description.

If you have or your ex-spouse has a retirement plan from work that was started or used during your marriage or domestic partnership, those funds may be divided with the rest of the property in the divorce. See the “Divorce” section of the “Family Relationships” chapter in the *Handbook for Washington Seniors* for more information.

Different rules may also apply if you or your spouse or ex-spouse left employment before January 1, 1985. For more information on the rules before 1985, contact the U.S. Department of Labor at 1-866-444-3272.

Resources

- *Handbook for Washington Seniors: Legal Rights and Resources*, by Legal Voice: Covers a wide range of legal issues affecting seniors and their families and caregivers. This publication is an excerpt from the *Handbook*. Available in English and Spanish.
By phone: 206-682-9552 x 114
Email: info@legalvoice.org
Online: www.legalvoice.org/seniors

ERISA Retirement Plan Information

- Internal Revenue Service (IRS): Review the federal tax laws and tax information regarding individual retirement plans.
By phone: 1-877-829-5500 (questions beyond the scope of telephone representatives will be answered by an Employee Plans Specialist within 15 days)
By mail: Internal Revenue Service, TE/GE Division, Correspondence Unit, P.O. Box 2508, Cincinnati, OH 45201
Email: RetirementPlanQuestions@irs.gov
Online: www.irs.gov/Retirement-Plans
- The Pension Benefit Guaranty Corporation (PBGC): Information on defined benefit plans and guarantees for payment when your employer has insufficient money.
By phone: 1-800-400-PBGC (7242)
By mail: PBGC, 1200 K St N.W., Washington, D.C. 20005-4026
Online: www.pbgc.gov

Federal Laws

- U.S. Department of Labor: Relevant provisions of ERISA, the Internal Revenue Code, the Code of Federal Regulations, Executive Orders, and Technical Releases.
Online: www.dol.gov/ebsa/regs/main.html

Legal Help

- EXPOSE (Ex-Partners of Servicemen/women for Equality): Information about military pension plans, benefits for spouses in military marriages, military divorces, and referrals to lawyers for members.
By phone: 703-941-5844
Online: www.ex-pose.org
- Federal Tax Help: United Way of King County and AARP may be able to help you report your retirement income on your federal taxes for free.
Online: www.uwkc.org/need-help/tax-help/ or
www.aarp.org/money/taxes/aarp_taxaide/?intcmp=FTR-LINKS-INFO-TAXAIDE
- U.S. Department of Labor Employment Benefits Security Administration, Seattle Office of Participant Assistance: Responds to inquiries from plan participants about their legal rights and obtaining benefits that may have been denied.
By phone: 1-866-444-3272 or 206-757-6781 (Seattle area)
Online: www.dol.gov/ebsa/contactEBSA/consumerassistance.html
- Washington State Association for Justice: For referrals to ERISA lawyers.
By phone: 206-464-1011
By mail: 1809 7th Ave., Suite 1500, Seattle, WA 98101-1328
Online: www.washingtonjustice.org; click on “For the Public,” then “Find an Attorney” and search the in the ERISA field of practice

Lesbian/Gay/Bisexual/Transgender/Intersex Individuals

- *Planning with Purpose: Legal Basics for LGBT Elders* (see Part II), by National Center for Lesbian Rights
By phone: 415-392-6257
Email: info@lgbtagingcenter.org
Online: www.lgbtagingcenter.org/resources/pdfs/PlanningwithPurpose.pdf
- Gay Retirement Guide: Offers an online directory and resource list that covers everything from planning for retirement to best places to retire.
Online: www.gayretirementguide.com

Other Retirement Plans: Governments, Tax-exempt Organizations, IRAs, etc.

- Thrift Savings Plan, Federal Retirement Thrift Investment Board: Retirement savings and investment plan for Federal employees and members of the uniformed services.
By phone: 1-TSP-YOU-FRST (1-877-968-3778); TTY: 1-877-847-4385
Online: www.tsp.gov
- Internal Revenue Service (IRS): Information about government retirement plans, tax-exempt organization retirement plans and IRAs.

By phone: 1-877-829-5500 (questions beyond the scope of telephone representatives will be answered by an Employee Plans Specialist within 15 days)

By mail: Internal Revenue Service, TE/GE Division, Correspondence Unit, P.O. Box 2508, Cincinnati, OH 45201

Email: RetirementPlanQuestions@irs.gov

Online: www.irs.gov/Retirement-Plans; click “Tax Exempt and Government Entities” or “IRAs” at left

Preparing for Retirement

- Certified Financial Planner: Information about financial planning and referrals to financial advisors.
By phone: 1-800-487-1497
By mail: 1425 K St., N.W., Suite 500, Washington D.C. 20005
Online: www.letsmakeaplan.org
- U.S. Department of Labor Employee Benefits Security Administration: Detailed information on retirement savings and investments.
By mail: U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210
By phone: 1-866-444-EBSA (3272)
Online: www.dol.gov/ebsa/consumer_info_pension.html; information on retirement plans and pensions
Publications: www.dol.gov/ebsa/publications/; these publications and more:
 - *A Look at 401(k) Plan Fees*
 - *Savings Fitness: A Guide to Your Money and Your Financial Future*
 - *Taking the Mystery Out of Retirement Planning* (for those near or in retirement)
 - *Top 10 Ways to Prepare for Retirement*
 - *What You Should Know About Your Retirement Plan*
- MyRetirementPaycheck.org: Information and tools on planning for retirement, financial security during retirement, debt, fraud and more.
Online: www.myretirementpaycheck.org
- Social Security Administration: Request a Personal Earnings and Benefits Estimate Statement.
By mail: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Blvd., Baltimore, MD 21235
By phone: 1-800-772-1213, 7 AM – 7 PM; or TTY: 1-800-325-0778
Online: www.ssa.gov

Retirement Investment Information

- Federal Citizen Information Center: Information on money management and planning.
By mail: U.S. General Services Administration, 1800 F St. N.W., Room G142, Washington, D.C. 20405
By phone: 1-888-878-3256
Online: www.pueblo.gsa.gov

- Federal Trade Commission: Information on how to avoid investment and retirement fraud and schemes.
By phone: 202-326-2222; 1-877-FTC-HELP (382-4357); or TTY: 1-866-653-4261
By mail: 600 Pennsylvania Ave. N.W., Washington, D.C. 20580
Online: www.ftc.gov
- Internal Revenue Service (IRS): Information on catch-up contributions and limits.
By phone: 1-877-829-5500 (questions beyond the scope of telephone representatives will be answered by an Employee Plans Specialist within 15 days)
By mail: Internal Revenue Service, TE/GE Division, Correspondence Unit, P.O. Box 2508, Cincinnati, OH 45201
Email: RetirementPlanQuestions@irs.gov
Online: www.irs.gov/Retirement-Plans; click “Contribution Limits for Your Plan or IRA”
- Securities and Exchange Commission: Investor information and answers to questions regarding your retirement plan.
By phone: 1-800-732-0330
By mail: SEC Headquarters, 100 F St., N.E., Washington, D.C. 20549
Online at: www.sec.gov
- U.S. Department of Labor: Information on retirement plans, benefits and savings.
Online: www.dol.gov/dol/topic/retirement/typesofplans.htm

Women and Retirement Savings

- U.S. Department of Labor Employee Benefits Security Administration: Information on retirement savings with special considerations for women (available in Spanish).
Online: www.dol.gov/ebsa/publications/women.html
- Women’s Institute for a Secure Retirement (WISER): Information, publications, resource lists, and more.
By phone: 202-393-5452
By mail: 1140 19th St. N.W., Suite 550, Washington, D.C. 20036
Online: www.wiserwomen.org

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of January 2016.

© 2018 Legal Voice — 1-206-682-9552

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)