

EMPLOYER'S INACCURATE TAX ADVICE CREATES LIABILITY

Sometimes it doesn't pay to be helpful. This is particularly true, when an employer attempts to give tax advice about retirement plan distributions. In Griggs v. E.I. DuPont De Nemours & Company, an employee sued after receiving inaccurate tax advice from his employer regarding his retirement benefits.

Mr. Griggs, a long-time employee, accepted early retirement after receiving detailed information from his employer that a lump sum distribution of his early retirement benefit could be rolled over into his employer's retirement plan, thereby deferring taxes. Prior to Mr. Griggs accepting early retirement, DuPont learned that Internal Revenue Code limits would prevent Mr. Griggs from making a tax-free rollover. In fact, DuPont determined that most, if not all, of the lump sum would be immediately taxable. DuPont never advised Mr. Griggs of their mistake, and two months later Mr. Griggs received a check for the full amount of his early retirement benefit (\$133,000). Mr. Griggs, facing a tax bill of approximately \$50,000, sued the company.

The Court of Appeals ruled that DuPont's dissemination of inaccurate tax advice constituted a breach of its fiduciary duties under the early retirement plan, even though the company did not have an obligation to provide any individual tax advice.

When we assist our clients in retirement plan distributions, we use distribution election forms that advise participants to discuss their options with their own tax advisors. The lesson to be learned from the Griggs case is that employers should avoid providing more information than that which is required. The potential liability for inaccurate information is simply too great.