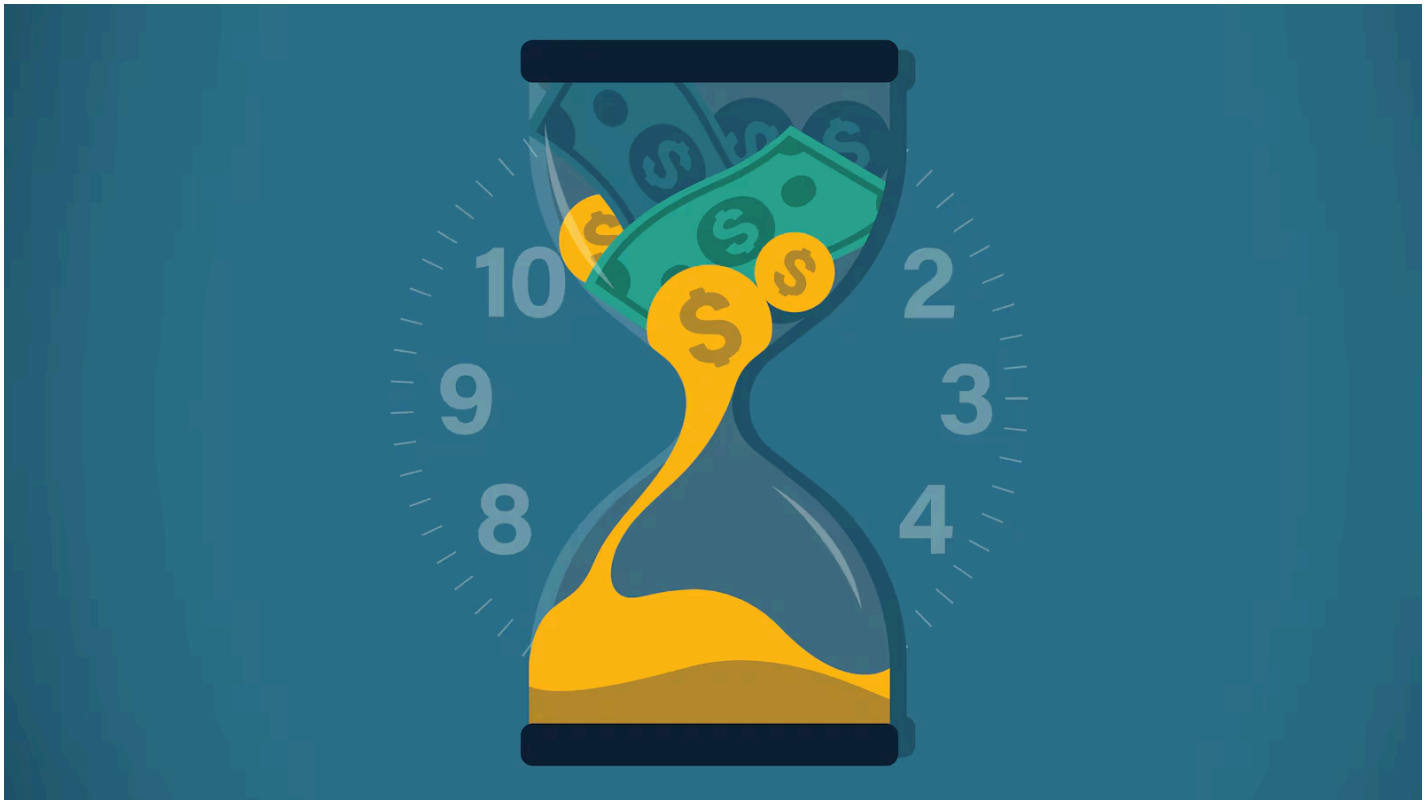
LAWSUITS & LEGAL

# Employers ask Supreme Court to resolve disputes alleging discrimination against married retirees' pensions

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By **Robert Steyer**

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Married retirees have fought for years in federal court against what they allege are employers' shortchanging their payments by using outdated mortality data — often going back several decades — that ignores the fact that people are living longer. Now, the Supreme Court has been asked to review the legal battle that has led to different rulings by different courts.

The Supreme Court process is still in the early stage: the losers in three pro-retiree rulings by appeals courts — FedEx Corp., Southern Company Services and the former Kellogg Co., — petitioned the court for guidance on the ERISA disputes. The justices have asked lawyers for the various retirees to respond by Dec. 18. After examining employers' and retirees' legal briefs, the justices will decide whether to accept the petitions for oral argument or deny review.

Mortality-data ERISA lawsuits have produced mixed results with some dismissals and some settlements, most prominently a $184.1 million agreement in July 2026 with AT&T, which included $35 million for plaintiffs' lawyers; a $59.2 million settlement in February 2021 with the former Raytheon (now RTX); and a $23 million settlement with Metropolitan Life Insurance Co. in June 2026.

"If this were a small-dollar issue, you wouldn't see this level of controversy," said Andrew Oringer, partner and general counsel for the Wagner Law Group, which represents sponsors in ERISA cases but isn't involved in the cases. "The financial impact is significant for employers and employees."

Although their facts differ, the cases raise two common questions: whether ERISA says payments to married retirees must be "reasonable" and how to calculate payments for married retirees that are "actuarially equivalent" to standard single-annuity pensions for individual retirees.

When employers calculate pensions, the standard for an individual employee at age 65 is the single life annuity. Employers can calculate alternatives, such as a joint-and-survivor annuity (JSA) which provides for a spouse if the employee dies.

The retirees in each case argued that a JSA must be "actuarially equivalent" to a single life annuity, saying that employers' use of old mortality data and inadequate interest rates underpaid married retirees and violated ERISA.

"Actuarial assumptions can have a dramatic impact on funding levels and costs," Oringer said. "There is a lot of uncertainty."

Lawyers for FedEx, Southern Company Services and the former Kellogg Co. filed separate petitions with the Supreme Court in mid- to late September, using similar arguments defending their policies.

ERISA's section on married retirees' pensions "contains no express limitation on the actuarial assumptions that may be used" in calculating payments for married retirees, said the FedEx petition.

"But in recent years, the ERISA plaintiffs' bar has filed dozens of class action lawsuits arguing that by referring to the annuities as the 'actuarial equivalent' of one another, (the ERISA section on married retirees' pensions) implicitly requires using 'reasonable' actuarial assumptions when calculating participants' benefits," the petition said.

Each of the pro-retiree appeals court decisions offers "no guidance to plan administrators as to the standard they would impose," the Southern Company Services petition said. "What type of mortality table to use (e.g., white collar, blue collar, etc.)? How often must a plan update its mortality tables and interest rate assumptions? Yearly? Monthly? Daily? And what is 'current' enough to be reasonable?"

These appeals court rulings create industrywide confusion that begs for a resolution, the petition continued. "Right now, plan administrators across the country must grapple with these questions, with no textual guidance from the statute, and no certainty until this Court addresses the underlying question," the petition said.

## Industry group weighs in early

The ERISA Industry Committee, which has advocated for employers in several lower-court mortality data cases, didn't wait for a response from retirees' lawyers. It filed an amicus brief Oct. 19, backing FedEx and Kellogg petitions, asking the Supreme Court to reverse an appeals court ruling that covered both complaints.

If retirees prevail, it "will increase costs and risks associated with offering and maintaining defined benefit plans, which is a result that Congress specifically and repeatedly sought to avoid in enacting and amending ERISA," the ERIC document said.

Assailing the appeals court ruling against FedEx and Kellogg as an "erroneous interpretation of ERISA," the amicus brief asked the Supreme Court to "restore the uniformity and reliability Congress intended ERISA to provide plan sponsors and participants alike."

Each of the employer petitions took similar paths to the Supreme Court.

FedEx retirees sued in August 2023, and the complaint was consolidated with a similar lawsuit. A federal judge in Memphis, Tenn. dismissed the complaint in September 2024, because the FedEx "plan's mortality methodology does not violate ERISA."

The decision was overturned by the 6th U.S. Circuit Court of Appeals, Cincinnati. ERISA "prohibits employers from using unreasonable, inappropriate actuarial assumptions" when calculating pensions for married retirees, the Cincinnati judges wrote in a 2-1 March 2026 ruling. The case is now called FedEx Corporation et al. vs. Watt et al.

The 6th U.S.Circuit ruling also applied to the Kellogg case. Plaintiffs sued in September 2023 against several defendants, but a federal judge in Detroit dismissed the lawsuit in April 2024. ERISA "does not require that plans employ certain assumptions or mortality tables," the judge wrote.

As with the Memphis federal court ruling, the appeals court reversed the Detroit decision and sent it back to the trial court. (The Memphis federal judge recently agreed to review the complaint against FedEx.)

The Kellogg case is now called Bakery, Confectionary, Tobacco Workers and Grain Millers Pension Committee et al. vs. Reichert et al. The petitioners are the union pension committee; Kellanova and WK Kellogg Co.; the Kellanova Pension Plan; and unnamed plans' fiduciaries. Kellanova and WK Kellogg are the two companies created by the split of Kellogg Co. in September 2023.

Two retirees sued Southern Company Services and fiduciaries in September 2022 saying the use of outdated mortality data deprived their JSA of an actuarially equivalent payment to a single life annuity provided by the plan. A federal district court in Atlanta dismissed the complaint in September 2024.

However, the 11th Circuit Court of Appeals, Atlanta, in a May 2026 decision, reversed the district court. "In defendants' view, it's fine to use unreasonable assumptions about life expectancy or annual interest rates," the appeals court judges wrote.

Defendants argued that "as long as retirement plans write down the assumptions ahead of time, ERISA allows them to use any assumption they please," the judges wrote. "We don't agree."

The case is Southern Company Services Inc., et al vs. Drummond et al. (When the complaint was before the 11th Circuit, the Department of Labor filed an amicus brief supporting the company).

## 'No one-size-fits-all' standard

Retirees in various cases have argued that employers' pension calculations with old mortality data tables conflict with employers' use of updated tables when calculating lump sum payments, the present value of benefit obligations, information to shareholders via annual 401(k) statements and information to the Securities and Exchange Commission.

ERISA attorneys point out there's no one-size-fits-all requirement. "Actuaries say they use different tables for different uses," said Amanda Amert, partner and chair of the ERISA litigation group at Willkie Farr & Gallagher, adding that she wasn't commenting on specific cases.

"Using different tables for different purposes is fairly common," said Amert, whose firm represents sponsors in ERISA cases.

Both Amert and Oringer said that given the legal uncertainty, sponsors shouldn't overreact and should wait for clarity from the Supreme Court.

Another challenging issue common among mortality data lawsuits is the defense by employers and industry members that the word "reasonable" doesn't appear in the ERISA section for married retirees' pension calculations.

"Congress has repeatedly imposed express reasonableness requirements on actuarial assumptions in other parts of ERISA and required specific actions by employers and plan sponsors when it wished to do so," said the amicus brief from the ERISA Industry Committee. "Congress did neither here."

Calling "reasonableness" for retiree pension calculations a "judicially-created" standard, the amicus brief said it conflicted with ERISA as well as the Internal Revenue Code, necessitating a reversal by the Supreme Court.

"The rules (for 'reasonableness') are not uniform," Oringer said. "If it was easy and obvious, you wouldn't have something that piqued the interest of the Supreme Court."

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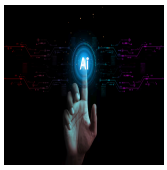
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