

## Pension Plan Sponsors Should Be Mindful Of A New Wave Of Class Action Lawsuits

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In December 2018, class action lawsuits under the Employee Retirement Income Security Act (ERISA) were filed against several large single-employer defined benefit plans. The suits focus on the calculation of joint and survivor annuities and/or early retirement benefits that are available in these plans.

These annuities provide reduced benefits to retired participants while they are alive, in exchange for the continuation of pension payments to the participants' spouses following the deaths of the participants. The common claim among the lawsuits is that the mortality table used by the plan is significantly out-of-date, and when combined with the plan's interest assumption, does not provide "actuarially equivalent benefits."

In short, the plaintiffs are stating that by using a mortality table that anticipates the death of a participant sooner than a current mortality table, the reduction in the annuity benefit will be overstated.

The administration and calculation of joint and survivor annuities and early retirement factors under defined benefit plans is a relatively unexplored area of the law. Changing actuarial factors impacts many aspects of a defined benefit plan and determining whether a particular mortality table is "reasonable" or not, is an unsettled area of the law. The complaints also allege breaches of fiduciary duty claims related to failing to administer the plans in accordance with ERISA.

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### Practice Areas

Counseling and  
Transactional

Employee Benefits and  
Executive Compensation

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Given the uncertainty of the outcome of these cases, plan sponsors of defined benefit plans should consider discussing their plan's actuarial factors, including the mortality tables, with their actuaries and legal counsel to determine the reasonableness of such factors