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IBM ruling turns promising pension move into headache

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By Deepa Babington

NEW YORK, Aug 3 (Reuters) - A once-popular pension plan adopted by many large companies to save money threatens to turn into a corporate headache, as conflicting rulings on whether they are unfair to older employees pile up.

Underfunded pension plans and higher pension costs have been in the spotlight in recent months as the falling stock prices of the past three years and declining interest rates hurt portfolio returns at many major companies.

The latest salvo over controversial "cash balance" pension plans came on Thursday, when a federal judge in Illinois ruled that International Business Machines Corp.'s ([IBM](#)) switch to such a pension plan in the 1990s discriminated



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against older employees.

That is in direct contrast to proposed rules by the Internal Revenue Service that argue that cash balance plans do not discriminate against older employees, said Dallas Salisbury, president of the Employee Benefits Research Institute. Several years ago, a federal judge ruled that the conversion to a cash balance plan by Onan Corp., a division of engine-maker Cummins Inc. ([CUM](#)), did not violate age discrimination laws.

"(The IBM ruling) creates a great deal of confusion since other courts have come to opposite conclusions and so did the U.S. Treasury in its proposed regulation," said

Mark Ugoretz, president of the ERISA Industry Committee, a non-profit group that lobbies on employee benefits issues on behalf of companies.

In a separate development, an Illinois court ruled against office equipment maker Xerox Corp. ([XRX](#)) on Friday in a case on underpaying retirement benefits to former workers and said it must pay damages of \$300 million.

Benefits in traditional pension plans are typically based on a formula that factors in the length of employees' service and their highest salaries earned over the years, which tends to boost the payout for older workers. In a cash balance plan, however, an employee's average salary over the years and contributions by the company are deciding factors.

Since the 1980s, companies have been switching to cash balance plans, which tend to result in lower overall pension costs and are attractive to younger employees who change jobs frequently. As many as 400 large companies would be affected by the latest ruling, says IBM, which argues its plan does not discriminate against older employees.

In particular, the ruling against IBM could expose other companies that switched to cash balance plans in recent years to similar lawsuits, some pension experts say.

Unless those companies reverse their decisions or give employees the choice of different formulas to calculate their pension benefits, more lawsuits will follow, said Karen Ferguson, director of the Pension Rights Center, a consumer advocacy group that worked closely with the employees who sued IBM.

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But more than anything else, the latest ruling adds to the confusion over the future of and potential problems stemming from cash balance plans, experts say. The fate of the lawsuit against IBM itself has yet to be sealed since the company has promised to appeal the ruling.

"With the combination of the various different pieces of litigation, plus the regulatory process that's underway, it would be very much premature to reach a conclusion on the implications of this," Salisbury said.

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