

Personal Business

When Pension and Unemployment Checks Don't Mix

By DORI R. PERRUCCI

JANICE SWEET FAIRLEY spent virtually all of her working career at the telephone company, starting as an operator for Michigan Bell, and rising to a manager of data services after the company was reorganized as Ameritech.

"I was Miss Ameritech to the world," said Mrs. Fairley, who lives in Clark Lake, Mich. But in December 1997, several months before SBC Communications acquired the company, she was laid off as part of a general downsizing. She had just turned 50.

But Mrs. Fairley said she received more bad news later, after she learned that her former employer was challenging her right to collect unemployment benefits.

Ed Greenawald, 59, of Greensboro, N.C., said he ran into similar problems after he was laid off from Wachovia Bank in November 2000, where he was a senior manager. He had worked for the company for 16 years. It was only after he challenged the company's initial refusal to pay unemployment, he said, that he was able to collect partial benefits.

How did these problems arise? Unknowningly, Mrs. Fairley and Mr. Greenawald had set off an overlooked, 25-year-old provision in the Federal Unemployment Tax Act that requires states to offset or reduce unemployment benefits against pensions to avoid what might be perceived as "double dipping." After she left Ameritech, Mrs. Fairley said, she took a lump-sum distribution on her defined-benefit pension plan and her 401(k) plan and rolled it over into an Individual Retirement Account. Mr. Greenawald said he chose a small lump-sum payment and a monthly annuity, which he started receiving right away.

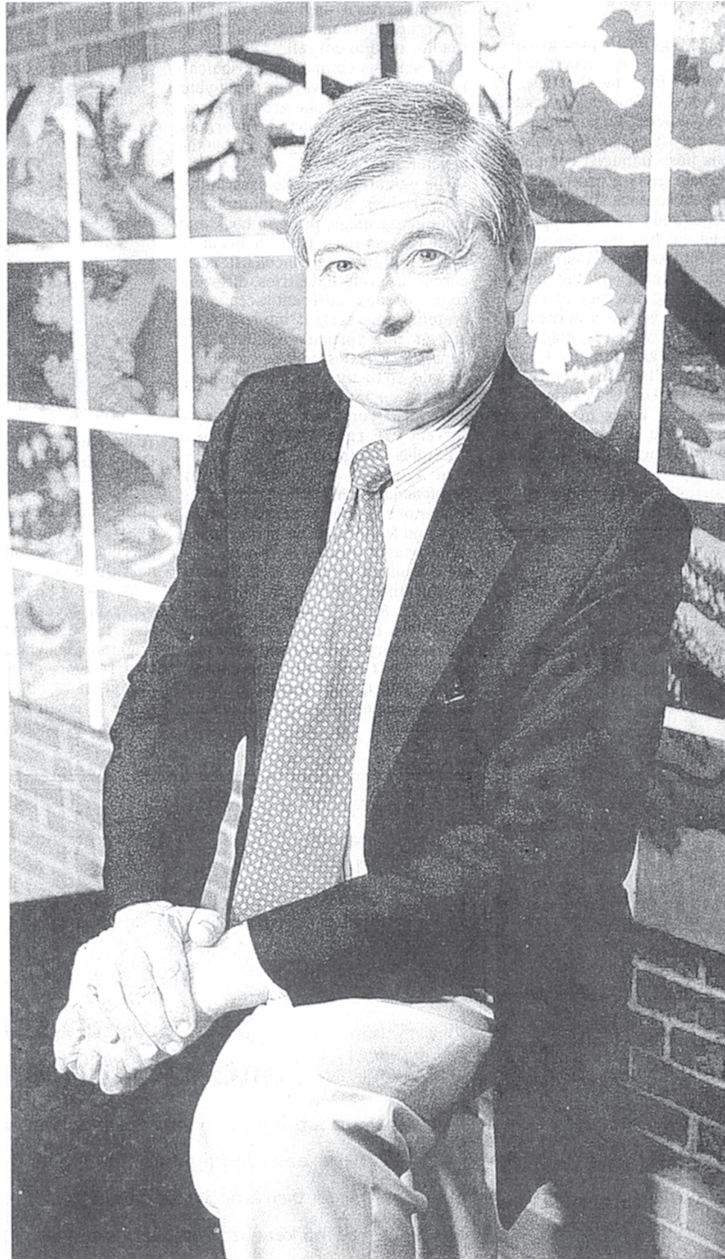
Because the states, not the federal government, administer unemployment benefits, it is up to each state to interpret the federal unemployment law as it sees fit.

All states, by law, must reduce unemployment benefits whenever there is an annuity payout from a pension plan that is funded in full by an employer, such as a defined-benefit plan and certain defined-contribution plans that offer annuities, pension experts say. Although most states, they add, no longer count rollovers as the receipt of a pension, and therefore, do not reduce unemployment benefits, about a dozen states still do, including New York and North Carolina. Michigan was once in that category, they say, but it changed its policy in 1999 — a change that is now being challenged by Mrs. Fairley's former employer. About 20 states, meanwhile, will also offset unemployment benefits if someone is collecting Social Security benefits, pension experts say.

WHILE the federal Labor Department says it has no position on the Social Security issue, it maintains that rollovers should not affect unemployment benefits. "Generally our position is that if the money is not received, it's not deducted from unemployment," said Grace Kilbane, director of the Labor Department's Office of Workforce Security, which oversees the unemployment system. But she added that "it's the states' choice" and that the federal law "gave them lots of options." Many consumer advocates want all the states to follow the Labor Department's guidance.

"The rules were written for a time that no longer exists," said Clare Hushbeck, a labor economist in Washington with AARP, formerly the American Association of Retired Persons. "We've gone from assuming 20 years ago that people retire at 65."

For one thing, Ms. Hushbeck said, more retired workers may want — or need — to return to the work force, especially those



Jim Stratford for The New York Times

Ed Greenawald had difficulty getting unemployment benefits after leaving Wachovia Bank in Greensboro, N.C. He now teaches math at Davidson Community College.

whose 401(k) investments have shrunk in value because of the stock market's downturn. It is unfair, she said, to make them ineligible for unemployment benefits if they return to work and are then laid off.

AARP is planning to campaign for policy changes in some of the 20 or so states that still apply the pension offset provision against retired workers receiving Social Security, she said.

Rick McHugh, a staff lawyer and Midwest coordinator based in Michigan for the National Employment Law Project, a legal aid group, said that because state interpretation of federal law varied so widely, "there's been no serious efforts to fix FUTA," as the federal law is known. He is representing Mrs. Fairley in her challenge and has handled other pension-offset cases.

"There's no quick fix, and because of that,

it hasn't gotten on anybody's radar screen in Washington," he said. "I think it's out of step with the other policies we have in place in our society, where we generally try to encourage people to accumulate funds for retirement."

Others, however, say the law is fine the way it is. "People who are collecting retirement pay, by and large in the vast majority of cases, are not in the job market, and thus some sort of coordination with unemployment is essential," said Eric Oxfeld, president of UWC Strategic Services, a group in Washington that lobbies for employers on unemployment law. "Pension offset is critical in guarding against double-dipping by workers, especially in a time of high unemployment; it even acts as an incentive in getting workers back to work."

Mrs. Fairley, now 55 and a training

manager for NCO Financial Services in Jackson, Mich., said she had not been planning to retire when she chose to roll over her pension instead of leaving it with her employer. "I didn't want to leave my money with them," she said.

She said she knew she would have to pay taxes and a penalty on withdrawals from her I.R.A., and she even checked with the state's unemployment office to make sure that withdrawals from her new I.R.A. account would not jeopardize her benefits.

She says she regrets, however, that she never thought to ask whether just rolling over her pension money into an I.R.A. would affect her unemployment benefits. Neither did Mr. Greenawald, now a math teacher at Davidson Community College in Lexington, N.C. "I wish I had been a little more savvy up front," he said. "You just assume the money is going to be there."

And neither had read this advice, posted on the Web site of the Labor Department's Pension and Welfare Benefits Administration (www.dol.gov/dol/pwba): "Receiving a lump sum or other distribution from your pension plan may affect your ability to

A law on benefits has many translations among the states.

receive unemployment compensation." Mrs. Fairley and Mr. Greenawald could have left their pensions with their employers, a move that would not have caused a reduction in their unemployment benefits.

Thomas Murphy, a retirement benefits consultant at Buck Consultants in Tenafly, N.J., said workers should become familiar with their pension plans. "Most people don't understand their pensions until they're leaving a job," he said. "Get the summary plan document and read it. If you don't understand it, take it to someone who can, either in human resources, a knowledgeable friend or your accountant."

HE also suggested learning about state unemployment laws: "Call and ask, 'How will taking my pension affect my ability to receive unemployment? If I leave my pension with my employer, will that affect my weekly benefit check?'"

Mr. Greenawald was fortunate — his state extended benefits for 12 months, although the payment was reduced to \$175 a week from \$300 because of the \$500 monthly annuity he was receiving.

Mrs. Fairley, meanwhile, has continued to contest Ameritech's action. She will have to pay back the \$6,900 in unemployment benefits she collected in 1998 if Ameritech succeeds in its challenge of the Michigan policy that permitted laid-off workers to roll over their pensions and still collect unemployment. Mrs. Fairley's case and at least a dozen others are now in the state's lower courts, all of them involving laid-off Ameritech workers, said Jack Wheatley, director of the Michigan Unemployment Agency.

Steve Kauffman, a spokesman for SBC Communications, said the company was confident that the Michigan Supreme Court, which heard testimony in its case in early December, would rule in its favor. The state, he said, has upheld pre-existing state law in 10 circuit courts over the last three years.

Mrs. Fairley says she is willing to wait it out, too. "I intend to keep going. There are lots of others facing the same issue," she said. □