



Employer Failed to Adequately Notify Participant of Group Life Insurance Conversion Rights

The Ninth Circuit Court of Appeals, in *Estate of Foster v. American Marine Servs. Group Benefits Plan*, has held that an employer failed to provide a former employee with adequate notice of the limited time period for converting his group life insurance coverage to an individual policy.

Background

In *Foster*, the employee received life insurance coverage through his employer's ERISA-covered group life insurance plan. The terms of the underlying life insurance policy provided that an employee's coverage would end on the last day of the month in which he or she was no longer eligible for coverage, which included termination of employment with the employer. In this situation, the policy granted terminated employees a 31-day window to convert their group life coverage into individual coverage.

In 2015, the employee was diagnosed with terminal esophageal cancer, and was laid off by the employer in February 2016. The employee remained on the employer's payroll until April 15, 2016, however, due to his use of accrued vacation and sick days. On April 30, the employer stopped paying life insurance premiums on the employee's behalf.

Following the employee's death in June 2016, his spouse, the named beneficiary, filed a claim for death benefits under the policy. The insurer denied the claim after determining that the employee had failed to timely convert his group life coverage to an individual policy when the employer had stopped paying premiums. The insurer's decision on this issue was upheld on administrative appeal, and the spouse sued the employer claiming that it had violated ERISA by not providing the employee with adequate notice of his conversion rights under the plan.

District Court

The district court sided with the employer, and the spouse appealed to the Ninth Circuit. In particular, the district court concluded that the employer's fiduciary duties under ERISA were limited to sending the employee the certificate of coverage and summary plan description ("SPD"), both of which explained his conversion rights.

Ninth Circuit

In reviewing the matter, the Ninth Circuit determined that the spouse had reasonably alleged that the employer breached its fiduciary duties by failing to provide her deceased husband with complete and accurate information regarding his conversion rights.

After reviewing both the certificate of coverage and the SPD, the Ninth Circuit determined that they were ambiguous as to exactly when the employee's 31-day conversion period began. Specifically, the Ninth Circuit

noted that under these documents, the employee's conversion period: (i) "could have been February 29, or 'the last day of the month in which he was laid off'"; (ii) "could have been April 30, the last day of the month when the employer stopped paying the employee"; or (iii) "could have been an even longer date, so long as the [employer] continued paying the premiums and [the employee] remained permanently disabled."

The court also observed that the employer: (i) had continued to pay premiums for the employee after February 29 (thereby increasing the potential for confusion on when the 31-day conversion period began); and (ii) was aware of the employee's terminal condition, and should have realized that the employee would be interested in maintaining his life insurance coverage.

The Ninth Circuit concluded that the certificate of coverage and SPD provided incomplete information about the deceased employee's conversion rights, and the employer had a duty to provide further explanation under the circumstances, to "paint a more complete picture" for the employee. Accordingly, the Ninth Circuit remanded the matter back to the district court for further consideration.

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