LEGAL UPDATE

Employer May Be Liable for Misrepresenting Life Insurance Conversion Information

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In *Watson vs. EMC Corp.*, the U.S. Court of Appeals for the Tenth Circuit has ruled that an employer may be liable for the amount of life insurance proceeds if the participant failed to convert his life insurance plan because of the employer's fiduciary violations. This ruling offers a cautionary tale for all ERISA fiduciaries including those of 401(k) plans.

Law. In general terms, there are two provisions in ERISA that allow a participant or beneficiary to sue for benefits or other relief. The first provision allows a beneficiary to bring suit " to recover benefits…under the terms of the plan, or to clarify [the] right to future benefits." The second provision allows a beneficiary to sue "to enjoin any act or practice which violates [ERISA] or the terms of the plan," or "to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce [ERISA] or the terms of the plan."

Facts. An employee who participated in his employer's group term life insurance plan was terminated and accepted a voluntary separation plan (VSP). Under the VSP, the employer would continue to pay him and he would retain employment benefits, including group-term life insurance, for a specified period of time. After that, the employee could convert his life insurance from a group to an individual policy.

When the VSP ended, the employee e-mailed the employer, "How do I start paying for my benefits at the employee rate?" The employer responded, "You will be receiving a bill from [the employer's payroll administrator]…to continue paying for your benefits." The employee never converted his life insurance from a group to an individual policy as required under the plan and the insurance contract. However, he paid each bill he received from the employer's payroll administrator.

After the employee died, his wife filed a life insurance claim with the plan's insurer. The insurer denied her claim because the employee had never converted his life insurance from a group to an individual policy or paid insurance premiums.

Trial Court. Because she did not have grounds to sue the insurer to recover benefits under the terms of the plan, the spouse sued the employer for breach of fiduciary duty seeking the insurance proceeds amount as an equitable remedy. She claimed the employer had breached its fiduciary duty because its response to the employee's inquiry was misleading and caused him to believe he still had life insurance coverage.

The lower court dismissed the spouse's claim, saying that because the decedent had failed to convert his insurance from a group to an individual policy and pay premiums, he was not entitled to benefits under the terms of the plan.

Court of Appeals. The Tenth Circuit reversed the lower court's decision, noting that, "ERISA imposes fiduciary duties on plan providers. It requires fiduciaries to 'discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries and…for the exclusive purpose of…providing benefits to participants and their beneficiaries.'"

It further stated that the second provision noted above is a "'catchall' [] provision' that 'act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that [ERISA] does not elsewhere adequately remedy[.]'"

Therefore, the appellate court ruled that the lower court had erred in treating the spouse's claim for fiduciary breach and equitable relief as a claim to recover under plan provisions. It remanded the case to the lower court for proceedings consistent with the ruling to determine if the employer was liable under ERISA's equitable relief provision.

Takeaway. This reasoning by the appellate court should be a reminder to plan sponsors and fiduciaries of 401(k) plans and all ERISA plans to be extremely cautious and thoughtful in responding to participant inquiries. Sponsors and fiduciaries should be aware that ERISA's equitable relief provisions may provide broad relief to participants in circumstances where mistakes or misleading information can be shown to result in a participant's lost benefits.

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