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BLOG

Part-Time Employee's Health Care Benefits Interference Claim Survives Motion to Dismiss

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During our health care reform eLunch last week, we discussed the possibility that employers' worker realignments may raise a claim for employees under ERISA Section 510, which prohibits an employer from interfering with the attainment of any right to which a participant may become entitled to under a plan. If you missed the eLunch, you can listen to it here.

Section 510 was front and center in a district court's recent refusal to dismiss a part-time employee's benefit interference claim. In *Sanders v. Amerimed*, a part-time pharmacist alleged that he was not promoted to a full-time position because his employer did not want to enroll him in its health plan. Amerimed argued that the employee had no standing to bring suit under Section 510 because he was not a participant in the plan. The court looked to the text of Section 510, which provides that "[i]t shall be unlawful for any person to . . . discriminate against a participant or beneficiary . . . for the purpose of interfering with the attainment of any right to which such participant may become entitled under the provisions of an employee benefit plan," and also to the definition of "participant," which means "any employee or former employee of an employer, or any member or former member of an employee organization, who is *or may become* eligible to receive a benefit of any type from an employee benefit plan." Based on Supreme Court precedent, the court indicated the "may become eligible" language means "a claimant must have a colorable claim that (1) he or she will prevail in a suit for benefits, or (2) eligibility requirements will be fulfilled in the future." The court then determined that the employee was a participant for purposes of Section 510 due to the following facts:

- The employee applied for full-time positions while he was a part-time employee;
- The employer accepted his applications for these positions and interviewed him for at least one such position;
- The employer recommended that the employee obtain an additional certification in order to help secure full-time employment, which he did;
- As an existing employee, his work was already known to the employer, and the employer had given him good performance reviews; and
- The employer specifically told him about a full-time position that would soon become available and explicitly stated that he would be considered for this position.

Keep in mind that this is not a final decision following a trial. It is only a refusal to dismiss the plaintiff's claims without a hearing. Nonetheless, this is when the costs of defending the suit will begin to mount.

As we have all seen in the press, health care reform has prompted many employers to publicize their intent to limit or reduce employee hours in order to avoid employer "pay or play" penalties that will take effect in 2015. This case serves as an important reminder of the need for careful planning before new limits and restrictions are imposed on part-time employees to minimize the rise of a Section 510 claim.
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