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BLOG

Fifth Circuit Severance Pay Decision Emphasizes the Need for a Strong Administrative Record

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Earlier this month, the Court of Appeals for the Fifth Circuit ruled against an employer who denied severance benefits because the employer failed to demonstrate that its decision was supported by substantial evidence. (See *Napoli v. Johnson & Johnson, Inc.* 5th Cir., No. 14-31000, Sept. 8, 2015). This decision serves as a useful reminder to employers of the need to (i) prepare a fulsome, contemporaneous, written administrative record when denying benefit claims under ERISA-governed plans, and (ii) follow the Department of Labor's rules for responding to claims.

The case arose when the plaintiff was terminated from employment, prompting him to file a claim under the employer's broad-based severance plan. The plaintiff was denied plan benefits on the basis that he violated company policies. The plan excluded from eligibility any employee whose employment was terminated due to a violation of applicable rules, policies, and/or practices.

One of the great advantages of designing a severance plan to be an ERISA plan is the generous standard of review provided to benefit determinations made by plan administrators. If the plan document provides the plan administrator with discretionary authority to determine eligibility for benefits and to construe the terms of the plan, the plan administrator's decisions generally are reviewed under a generous abuse of discretion standard. Under this standard, a court will defer to a plan administrator's decision unless the plan administrator acts arbitrarily or capriciously.

In this case, the court found that the severance plan administrator acted arbitrarily and capriciously because the administrative record contained no specific evidence supporting the determination that the plaintiff was fired for a violation of the employer's policies. The court noted that the only documents before the plan administrator at the time of its initial review were the employer's performance and conduct policy and a letter from the employer's general counsel to the plaintiff. The court found that a mere citation to a policy, absent any specific evidence indicating how the policy was violated, was not substantial evidence that the plaintiff was actually fired for having violated the policy.

Importantly, the court also found that the plan administrator failed to provide the plaintiff with a full and fair review of the claim because the plan administrator did not describe the specific reasons for the denial of benefits as required by Department of Labor regulations.

This case serves as an important reminder of the need to build a strong administrative record and to comply with Department of Labor regulations that specifically describe how claims and appeals must be handled under ERISA plans. Every employer and plan administrator who performs, or delegates, claim determinations needs to be mindful of the administrative record created during the claim determination process.

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