



Courts May Require Disclosure of Investment Policy Statements

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A recent case highlights the possibility that plan administrators may need to provide investment policy statements to plan participants upon written request.

In *Murphy v. Verizon Commc'ns, Inc.*, the Court of Appeals for the Fifth Circuit considered whether investment guidelines must be provided upon request to plan participants and beneficiaries and determined that ERISA requires the disclosure of formal legal plan documents. Whether an investment policy statement qualifies as a formal legal plan document largely depends on whether such a statement is binding on the operation of the plan.

Under ERISA, a plan administrator must, upon written request of any participant or beneficiary, furnish a host of documents, including a copy of the latest updated summary plan description and any “contract, or other instrument under which a plan is established or operated.”

The Fifth Circuit held that this catch-all provision should be interpreted narrowly so as to apply only to formal legal documents that govern a plan. The court then denied the participants’ claim that investment policies fell within the catch-all because the participants had neither specifically pled that the guidelines were binding on the plan nor pointed to plan language indicating that the guidelines had any mandatory effect. Interestingly, the court pointed to a Fourth Circuit case that required the disclosure of investment policies under the catch-all provision and found that it was not inconsistent with its current findings because the Fourth Circuit case dealt with a plan that specifically contemplated the establishment of funding and investment policies.

In adopting this approach, the Fifth Circuit generally follows the Second, Fourth, Seventh, and Eight Circuits, which have similarly found that the catch-all provision applies only to formal legal plan documents. In contrast, the Sixth Circuit favors disclosure where it would help participants understand their rights. The Ninth Circuit has found that documents should be provided to the extent they provide individual participants with information about the plan or benefits.

Plan administrators may be subject to penalties for failing to provide plan documents upon request. Therefore, it is important for them to understand their obligations with respect to investment policy statements under these various court rulings. In addition, ERISA requires that plan fiduciaries discharge their duties with respect to a plan in accordance with the documents and instruments governing the plan. This includes investment policies. Therefore,

irrespective of the specific disclosure rule applicable to the plan administrator, it is critical that plan fiduciaries charged with overseeing plan investments review, understand, and periodically update plan investment policies.

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