Compliance Bulletin

ERISA Fiduciary Litigation Trend: Health Plans and Voluntary Benefits

Fiduciary obligations under the Employee Retirement Income Security Act (ERISA) have long been associated with retirement plan management, but that is changing. A growing wave of litigation has begun testing whether those same standards apply to group health plans and voluntary benefits such as accident, critical illness and hospital indemnity insurance. While early cases, including a class action against Johnson & Johnson alleging mismanagement of prescription drug benefits through its pharmacy benefit manager arrangements, were dismissed on procedural grounds, subsequent legal developments suggest that courts are increasingly willing to let these claims move forward.

Health Plan Litigation

In *Barbich v. Northwestern University*, current and former employees filed a class action alleging the university breached its ERISA fiduciary duties by failing to prudently select and monitor the plan's preferred provider organization (PPO) insurance options and failing to disclose material information to plan participants. At issue in the case is the plan's "Premier PPO" option, which had a higher premium and did not provide commensurate benefits as compared to the "Value PPO" option. A federal judge denied the motion to dismiss, marking a departure from prior similar cases that have struggled to get past the pleadings stage.

Voluntary Benefits Cases

Four coordinated class actions were filed against major employers over the management and administration of their accident, critical illness and hospital indemnity insurance programs. Among the allegations are that the employers failed to prudently select and monitor carriers and broker compensation, causing plan participants to pay excessive and unreasonable premiums. The cases are at varying stages and litigation remains ongoing, but additional cases against other employers have followed, suggesting this is an area of litigation that is likely to continue to grow.

What This Means for Employers

Taken together, these developments reflect a noteworthy shift in how ERISA fiduciary standards are being applied. The *Northwestern* ruling raises novel questions for employers offering multiple health plan tiers, while the voluntary benefits cases seek to extend ERISA fiduciary obligations to a category of benefits that has generally been regarded as exempt from such requirements. If the plaintiffs in these cases prevail, it could have significant implications for how employers select carriers, oversee brokers and evaluate compensation arrangements. Although both matters remain at early procedural stages, employers should remain mindful of how fiduciary principles may apply across all employee benefit offerings.

Employer Action Items

In light of these developments, employers should take the following steps to evaluate how they currently manage and administer their benefit offerings:

- Audit all health plan tiers to ensure higher-premium options provide commensurate benefits relative to lower-cost alternatives;
- Review plan communications for accuracy and completeness regarding cost and value differences between plan options;
- Document the process and rationale used to select carriers and structure benefit offerings;
- Review broker and consultant compensation for voluntary benefit programs and assess whether fees are reasonable;
- Reassess reliance on the voluntary benefits safe harbor exemption under ERISA; and
- Consult benefits counsel to evaluate potential exposure as litigation progresses.

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