



Electronic Dispatch

Employee Benefits Law Information Memo

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RECENT COURT DECISIONS HIGHLIGHT THE IMPORTANCE OF MAINTAINING ACCURATE AND COMPLETE SUMMARY PLAN DESCRIPTIONS

Most employers are aware of the importance of maintaining updated and accurate employee benefit plan documents. However, many employers pay far less attention to the content of their summary plan descriptions ("SPDs"). In some cases this may be due to a belief that the plan document will govern in the event that there is an inconsistency between the plan document and the SPD. In fact, most SPDs contain express language that in the event of any inconsistencies between the plan document and the SPD, the terms of the plan document will control. However, an increasing number of federal courts have held just the opposite, and have found employers liable for benefits based upon deficient or erroneous SPDs if the terms of the SPD are more favorable to a participant or beneficiary making a claim for benefits ("Claimant"). As a result of these decisions, employers should consider reviewing their SPDs to make sure that they accurately and properly communicate the terms of the applicable plans.

Recent Case Law

Recent court cases have made it increasingly less burdensome for Claimants to assert claims for benefits based upon faulty SPDs. Prior to these decisions, courts generally held that even if an SPD was defective (i.e., the SPD conflicted with the terms of the plan or the SPD omitted a provision of the plan), a Claimant still was required to demonstrate that he or she detrimentally relied upon the terms of the defective SPD. This generally meant that the Claimant had to show that he or she had read the defective SPD, reasonably relied upon its terms, and was injured (i.e., lost benefits) as a result. Within the past year, both the Second Circuit Court of Appeals (the federal court with jurisdiction over New York, Connecticut and Vermont) and the Third Circuit Court of Appeals (the federal court with jurisdiction over Pennsylvania, New Jersey, Delaware and the Virgin Islands) have adopted standards that do not require a Claimant to demonstrate detrimental reliance on the defective SPD. As a result, Claimants in these jurisdictions are required to overcome fewer hurdles in successfully asserting claims for benefits based upon defective SPDs.

Second Circuit Standard – "Prejudice"

In Burke v. Kodak Retirement Income Plan Committee, 336 F.3d 103 (2d Cir. 2003), the Second Circuit adopted a "prejudice" standard that requires a Claimant to initially demonstrate only that he or she was *likely* to be harmed as a result of the deficient SPD. In other words, a Claimant could potentially prevail on a claim for benefits if the Claimant would have been misled had the Claimant actually read and relied upon the SPD, regardless of whether the Claimant actually did so. The employer can rebut a showing of prejudice by presenting evidence that the deficient SPD was harmless error (e.g., by providing evidence that the Claimant had actual knowledge that the information contained in the SPD was erroneous or deficient). In Burke, the spouse of a deceased participant in Kodak's pre-retirement Survivor Income Benefits Plan ("SIB Plan") sought survivor benefits under the SIB Plan. The spouse had been married to the participant for less than a year, and was not eligible for traditional survivor benefits under the SIB Plan. Prior to their marriage, however, the spouse and the participant had lived together as domestic partners for eight years. Survivor benefits were available under the SIB Plan for domestic partners provided that an affidavit of domestic partnership was submitted to the SIB Plan, but the participant and spouse never submitted an affidavit. The affidavit requirement was set forth in the SIB Plan document as well as in various employee communications. However, an SPD set forth in a handbook that covered several different benefit plans cited the affidavit requirement, but not in the SPD section that explained SIB Plan benefits. The Second Circuit ruled that because the relevant section of the SPD omitted the affidavit requirement, the SPD conflicted with the SIB Plan. The court held that the spouse was prejudiced by the omission of the affidavit requirement in the SPD, and was entitled to survivor benefits under the SIB Plan.



Third Circuit Standard – SPD As a Contract

In Burstein v. Retirement Account Plan for Employees of Allegheny Health Educ. and Research Foundation, 334 F.3d 365 (3d Cir. 2003), the Third Circuit ruled that a Claimant is not required to show either reliance or prejudice to recover benefits based upon a defective SPD. The court reasoned that because the SPD is “contractual in nature,” the employer is bound by its terms, and that in the event of a conflict between the plan and the SPD, the SPD will control. The court explained that if an SPD conflicts with a plan document, a court should read the terms of the “contract” to include the terms of the plan document, as superseded and modified by the SPD. Thus, under the Third Circuit’s standard, an employer may be held liable for a defective SPD regardless of whether the Claimant read, relied upon, or was even prejudiced by the SPD’s terms. In Burstein, the plaintiffs were nonvested participants in a cash balance plan maintained by the employer. The SPD provided that benefits would vest and become nonforfeitable upon plan termination. In contrast, the plan provided that the right to a nonforfeitable benefit was limited to the funded amount of a participant’s benefit at the time of termination. Because the plan was not fully funded at the time of termination, the plan refused to vest the nonvested participants based upon the funding limitation set forth in the plan. The court ruled that the terms of the SPD governed, even though it was acknowledged that the participants neither read, relied upon, nor were prejudiced by the SPD.

Recommended Action

The decisions in Burke and Burstein highlight the importance of maintaining accurate and complete SPDs. In order to help lessen the risk of costly litigation, employers should consider reviewing their SPDs to ensure that they accurately reflect the terms of the plans that they summarize and do not omit any material information. As evidenced by the Burke decision, the review should assess whether important requirements, restrictions and limitations are referenced in the appropriate sections of the SPD where participants would expect to find them. Further, employers may want to evaluate whether a more comprehensive SPD may be appropriate for more complex plans. For example, a plan document containing numerous restrictions and limitations most likely will require an SPD that goes beyond the level of detail found in most standardized SPDs. Taking steps now to help ensure that SPDs properly reflect plan terms could substantially reduce an employer’s potential litigation exposure in the future.

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