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The Supreme Court's Recent Take on Employee Benefits

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Presentation Outline

- Implications of the *Gobeille* case: ERISA pre-emption of state health data collection laws
- Health plan reimbursement rights after the *Montanile* decision
- The Supreme Court reaffirms ERISA stock-drop standards in *Amgen*
- Application of the *Obergefell* same-sex marriage decision to benefit plans and IRS guidance

Gobeille v. Liberty Mut. Ins. Co.

Gobeille v. Liberty Mut. Ins. Co.

- ***Facts:***
  - Vermont has all-payer claims database law
  - Liberty Mutual Insurance Company maintains a self-insured health plan
  - Liberty directed the plan's TPA to not submit the data
  - Vermont issued subpoena to TPA seeking medical and pharmacy claim files
  - Liberty filed suit
- ***Procedure:***
  - District court granted summary judgment for Vermont
  - Second Circuit reversed in a 2-1 decision
- ***Holding:***
  - ERISA pre-empts Vermont's "all-payer database law" to the extent it applies to self-insured health plans

Gobeille v. Liberty Mut. Ins. Co.

- ***Analysis:***
  - Section 514 states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan . . . ."
  - Despite 514's breadth, two categories of state laws are pre-empted by ERISA:
    - (1) State laws that have a "reference to" ERISA plans
      - That is, "[w]here a state law acts immediately and exclusively upon ERISA plans . . . or where the existence of ERISA plans is essential to the law's operation," *Cal. Div. of Labor Stds. Enforcement v. Dillingham Constr. N.A.*, 519 U.S. 316, 325 (1997)
    - (2) State laws that have an impermissible "connection with" ERISA plans –
      - That is, a state law that "governs . . . a central matter of plan administration" or "interferes with nationally uniform plan administration," *Egelhoff v. Eglehoff*, 532 U.S. 131, 148 (2001)

Gobeille v. Liberty Mut. Ins. Co.

- ***Analysis (cont.):***
  - Concluded that mandatory collection of medical claims would have an impermissible connection with an ERISA plan because it would interfere with the uniformity of ERISA plan administration
  - ERISA authorizes the DOL – not the states – to administer the reporting requirements of ERISA plans, and pre-emption was necessary to prevent states from imposing inconsistent and burdensome reporting requirements
- ***Implications:***
  - No sea-change in ERISA pre-emption doctrine, but concurring and dissenting opinions suggest that this area of law will continue to evolve
  - *Gobeille* unlikely to slow similar state laws
  - Did not discuss privacy issues

Montanile v. Bd. of Trs. of Nat'l Elevator Industry Health Benefit Plan

Montanile v. Bd. of Trs. of Nat'l Elevator Industry Health Benefit Plan

- ***Facts:***
  - Montanile's ERISA health plan paid his medical expenses (approx. $120,000) after he was injured in a car accident
  - Under the plan's terms, Montanile's acceptance of benefits constituted an agreement to reimburse the plan with any amounts received from another party, thus creating an equitable lien
  - Six months after reimbursement negotiations broke down, plan filed suit under 502(a)(3)
    - "A civil action may be brought by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this title or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to address such violation or (ii) to enforce any provision of this title"

Montanile v. Bd. of Trs. of Nat'l Elevator Industry Health Benefit Plan

- ***Procedure:***
  - District court and Eleventh Circuit held that the plan was entitled to recover out of Montanile's general assets
  - Circuit split

- ***Holding:***
  - Plan has no claim against a participant's general assets (which would be a legal remedy), but instead only an equitable claim against the settlement fund, which disappears if settlement proceeds are dissipated on non-traceable assets (e.g., food or travel)

Montanile v. Bd. of Trs. of Nat'l Elevator Industry Health Benefit Plan

- ***Analysis:***
  - Prior cases establish that "appropriate equitable relief" under 502(a)(3) is limited to the categories of relief typically available in pre-merger equity courts
  - Traditionally, could only enforce equitable lien in one of several ways:
    - Specific settlement funds in defendant's possession
    - "Traceable assets" (e.g., car)
    - Commingled funds
  - Lien destroyed to the extent the identifiable property is dissipated entirely on non-traceable items (e.g., food or travel)

Montanile v. Bd. of Trs. of Nat'l Elevator Industry Health Benefit Plan

- ***Implications:***
  - Reaffirms a plan's right to an equitable lien against certain assets held by a participant or his attorney
    - Plan sponsors should check plan documents and SPDs for language that creates a lien by agreement
    - Promptly assert and pursue claims to recover overpayments
    - Be prepared to pursue "tracing" or commingling of assets
  - Clarifies that lien is destroyed to the extent funds are dissipated entirely on non-traceable items
  - More litigation?

Amgen Inc. v. Harris

Amgen Inc. v. Harris

- ***Facts:***
  - Plaintiffs participated in ESOP that invested in Amgen stock
  - Value of Amgen fell, and plaintiffs filed class action alleging breach of fiduciary duty
- ***Procedure:***
  - District court granted Amgen's motion to dismiss
  - Ninth Circuit reversed
  - Amgen filed cert petition; while pending, Supreme Court issued *Dudenhoeffer* decision
    - Held that ESOP fiduciaries are not entitled to a presumption of prudence but instead are subject to the same duty that applies to ERISA fiduciaries in general (except duty to diversify the fund's assets)
    - Created new pleading standards for stock-drop claims

Amgen Inc. v. Harris

  - ***Type 1:*** For claims based on public information, allegations that fiduciaries should have outguessed the market's assessment of the stock's value are generally implausible absent special circumstances affecting the reliability of the market price
  - ***Type 2:*** For claims based on inside information, plaintiffs must allege an alternative action that the defendant could have taken that would have been consistent with the securities laws and that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than to help it

- Supreme Court granted cert as to *Amgen I* and remanded for reconsideration in light of *Dudenhoeffer's* new pleading standards
- On remand, Ninth Circuit upheld their original determination that plaintiffs sufficiently alleged violations of ERISA fiduciary duties
- Supreme Court granted cert as to *Amgen II* and reversed in a single order and *per curiam* opinion, without briefs on question presented
  - Thus sending a clear message that the Ninth Circuit's interpretation of *Dudenhoeffer* was wrong

Amgen Inc. v. Harris

- ***Holding:***
  - Plaintiff's complaint lacked sufficient facts and allegations to support their claim that fiduciaries should have removed Amgen stock from the list of plan investment options
- ***Analysis:***
  - Ninth Circuit failed to properly evaluate the complaint in light of new pleading standards
    - Complaints must contain plausible factual allegations that a prudent fiduciary could not have continued offering company stock as an investment option
    - Complaints must be rigorously reviewed and courts cannot accept conclusory allegations of ERISA fiduciary breach

Amgen Inc. v. Harris

- ***Implications:***
  - Supreme Court's decision a huge win for ERISA fiduciaries
  - Reiterates that lawsuits against ERISA fiduciaries must be based on detailed factual allegations showing breach of fiduciary duty
  - Emphasizes that a motion to dismiss requires a court to scrutinize a complaint's allegations in order to "divide the plausible sheep from the meritless goats"

Application of *Obergefell* to Benefit Plans

Background: DOMA and *Windsor*

- Defense of Marriage Act, 1 U.S.C. §7
  - Enacted September 21, 1996
  - Section 2 provided that states need not recognize same-sex marriages performed in other states
  - Section 3 defined marriage as a union between a man and a woman for purposes of federal law
- *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013)
  - Decided June 26, 2013
  - Found Section 3 of DOMA to be unconstitutional

Background: Post-*Windsor* IRS Guidance

- Rev. Rul. 2013-17
  - Officially adopted a "state of celebration" approach to recognizing same-sex marriages for federal tax purposes
- Notice 2014-1
  - Applied *Windsor* and Rev. Rul. 2013-17 to cafeteria plans, flexible spending arrangements, health savings accounts
- Notice 2014-19
  - Applied *Windsor* and Rev. Rul. 2013-17 to qualified retirement plans
  - Generally required that any conforming amendments to qualified plans be adopted by December 31, 2014

What *Windsor* Didn't Do

- Windsor determined the treatment of same-sex spouses for federal law purposes only
- **Did not** require states to issue marriage licenses to same-sex couples
- **Did not** require states to recognize same-sex marriages performed in other states
- **Did not** affect tax treatment of employee benefits for state law purposes

Obergefell v. Hodges

- *Obergefell v. Hodges*, 576 U.S. ____ (2015), 135 S.Ct. 2584 (2015)
  - Decided on June 26, 2015
  - Held that the Fourteenth Amendment:
    - Requires a state's civil marriage laws to apply on the same terms and conditions to both opposite-sex and same-sex couples
    - Prohibits states from refusing to recognize valid same-sex marriages performed in other states
  - Recognized marriage as a fundamental right for all persons
  - Closed some gaps left by Windsor, particularly with regard to state tax issues for same-sex married couples

IRS Guidance: Notice 2015-86

- Issued on December 9, 2015
- Acknowledges that the required federal tax treatment of same-sex spouses under employee benefit plans had been addressed in *Windsor* and post-*Windsor* IRS guidance
- Recognizes that plan sponsors may desire guidance or clarification on certain administrative details and/or discretionary changes to their plans

Notice 2015-86: Qualified Retirement Plans

- Mandatory amendments were already required; *Obergefell* does not create any new amendment requirements
- Plan sponsors may make discretionary changes to provide new rights or benefits to same-sex spouses:
  - For example, making a joint & survivor annuity option available to participants receiving life annuities
  - Such changes must comply with applicable qualification and non-discrimination requirements

Notice 2015-86: Qualified Retirement Plans

- Plan sponsors may choose to apply the effects of Windsor and related guidance to a date before June 26, 2013
  - Notice 2014-19 provided for such retroactive application of *Windsor* for some or all purposes, provided the amendment met applicable qualification requirements
  - If the plan was not amended following Notice 2014-19, plan sponsors may do so now, provided that the amendment otherwise complies with Notice 2014-19

Notice 2015-86: Qualified Retirement Plans

- Discretionary amendments that increase plan liabilities are not permitted unless the plan is sufficiently funded or the plan sponsor makes an additional contribution (Code Section 436)
- Discretionary amendments are subject to the usual timing rules for adoption, i.e., generally must be adopted by the end of the plan year in which they became effective

Notice 2015-86: Health & Welfare Plans

- Federal tax law does not require plans to offer any specific benefits to spouses
- Federal tax law does not mandate spousal benefits for same-sex spouses even if offered to opposite-sex spouses; however, failure to do so raises discrimination issues
- To the extent spousal benefits are offered, any changes to conform health & welfare plans to Windsor were already required; *Obergefell* does not create any new amendment requirements
- Plan operations may need to change to reflect current definition of spouse under state laws

Notice 2015-86: Cafeteria Plans

- Notice 2015-86 addresses various questions regarding mid-year changes in cafeteria plan elections to add coverage for same-sex spouses:
  - If plan otherwise allows changes due to significant improvement in coverage, participants may change their elections accordingly
  - If eligibility criteria change during the year to add eligibility for same-sex spouses, such a change is a significant improvement in coverage for these purposes

Other Post-*Obergefell* Considerations

- Review plan documentation, participant communications and plan administration to ensure consistency with Obergefell
- Consider whether domestic partner coverage is necessary and/or desirable following Obergefell
  - Possible opportunity for plan simplification and avoiding imputed income tax issues
- Don’t forget about non-qualified plans and other executive compensation arrangements

Questions or Comments?

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