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How to Shoot Yourself in the Foot with Your SPD

by William D. Jewett on March 7, 2022

Benefit plan sponsors sometimes send out Summary Plan Descriptions (SPDs) having given too little thought to the legal consequences. Two recent cases illustrate how an organization can end up in serious and costly litigation based on statements that did not have to be made in SPDs that did not have to be issued.

In Hartshorne v. Roman Catholic Diocese of Albany (N.Y. App. Div., Dec. 23, 2021), the church-founded entity that sponsored the St. Clare's Hospital Retirement Income Plan terminated the plan in 2018, having made inadequate funding contributions for many years. In connection with the termination, it notified pension recipients that their benefits would be reduced or ended in 2019. Certain participants sued for breach of contract and breach of fiduciary duty – not under ERISA, since the plan was a church plan that had not elected to be subject to ERISA, but under New York law. The plan sponsor argued that the plan document gave it unfettered discretion to reduce or terminate benefits, as a church plan might well do. However, the plan sponsor, among other mistakes, had issued an SPD promising that "no modification, suspension or termination of the Plan may reduce" accrued benefits. Consequently, while the plan did not violate any anti-cutback rules in ERISA or the Internal Revenue Code – since those rules do not apply to a church plan – the plan sponsor breached a promise made to participants in the SPD by reducing benefits. The promise did not have to be made, but, having been made, the promise gave the plaintiffs a cause of action that they might not otherwise have had.

A similar story played out in Evans v. Capital Blue Cross (Pa. Super. Ct., Jan. 5, 2022), a state appellate court case involving short-term disability benefits that were exempt from coverage under ERISA as a payroll practice. The plaintiff's benefits had been discontinued based on a finding that she was not disabled, apparently contrary to certain medical records the plaintiff provided. She sued for breach of contract and violation of Pennsylvania's Wage Payment and Collection Law, asserting that her employer "had a duty to fairly and equitably abide by and comply with all of the terms and conditions set forth in the SPD." Her claim was that the SPD – again, none was required – constituted an offer of employment on specified terms and conditions, which she accepted by performing her job duties. The appellate court agreed and remanded the case for further proceedings.

The appellate court ruled against the employer even though the SPD in question specifically stated that the employer had "full discretion and authority to determine eligibility for benefits and to construe and interpret all terms and provisions of the Program." Clearly, the employer's lawyers had reviewed the SPD and taken steps to limit the possibility of legal action. Indeed, the SPD specified that "legal action cannot be taken" against the employer "sooner than 60 days after the date of proof of loss" or "more than 3 years after the date proof of loss is required to be furnished." Unfortunately, these specific limitations were found by the court to be an admission that the program contemplates the possibility of legal action to enforce its terms, making the SPD a contract which gives rise to a cause of action for breach of contract. Had the lawyers not crafted this language to discourage litigation, the decision would likely have come out differently.

These two cases suggest several lessons for plan sponsors and their lawyers. First, before issuing an SPD, ask yourself whether you are required to issue an SPD. If you are not, it may be advisable to communicate with employees in another way. While these cases might have come out the same way if the communications had not been included in an SPD, it seems possible that a misplaced effort to comply with the legal requirements for SPDs may have prompted the inclusion of language that worked against the defendants. Second, think twice before including familiar-sounding boilerplate that may promise more than necessary. The fact that many benefit plans are required by law to protect benefits does not mean that your plan is. Third, recognize that imposing limitations on the ability to sue is itself evidence of a contractual relationship whose terms can be breached. If you do not intend for your communication to be treated as a contract, you can have it say that it is not a contract.

If you have not reviewed your SPDs recently, now may be the time. The fact that your SPD includes legalese that sounds familiar could be just the thing that gets you in trouble.

Please contact a member of our Employee Benefits & Executive Compensation Group if you have questions about what your SPDs should and should not include for content.

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