



Practical Insights - Courts Defer to Fiduciary's Decision if ERISA Plan Contains Explicit Language

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Problem:

Employees participating in ERISA covered benefit plans have the right to dispute the interpretation of a plan provision or an adverse benefits decision made by a plan fiduciary, which can include the plan administrator. If not resolved on appeal at the plan level, these disputes often result in a lawsuit against the fiduciary. Courts may or may not defer to the fiduciary's determination.

How does a plan ensure that its fiduciary's benefit interpretations and determinations will be given deferential (more favorable) review by the Court?

Solution:

Plan administrators and other plan fiduciaries want a court to review their benefit determinations under the more favorable "abuse of discretion" standard instead of the less favorable "*de novo* review" standard. When applying the abuse of discretion standard, the court only reviews a determination to determine if it was reasonable in light of the plan provisions and the information before the plan administrator at the time the decision was made. When applying the *de novo* review standard, the court may review the determination to decide if it is correct and may consider additional information not presented to the plan administrator at the time the determination was made.

Although there are no "magic" words to grant discretionary authority, explicit and detailed language is preferred. Specifically, the plan documents, including the summary plan description, should state clearly that the fiduciary has "discretion" or "sole discretion" to interpret plan terms and determine eligibility for benefits under the plan. More general language, which does not use the term "discretion," but states that the fiduciary has "final authority" to interpret plan terms and decide benefit claims or "to construe and interpret" the plan, generally have been found to grant discretionary authority.

It is also important to review plan documents to make sure that they confer discretionary authority on the proper entity, whether it be the plan administrator or another party, who actually interprets the terms of the plan and makes benefit determinations.

Caveat:

Even if discretionary authority is properly drafted, and the right entity in the plan is given this authority, a court still may review a plan interpretation or

benefits decision under a *de novo* standard if that entity did not provide the employee with a “full and fair review,” due to its failure to follow the claim procedures set out in the plan document and U.S. Department of Labor claim regulations.