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LEGAL ALERT



Legal Alert: Court Finds FSA Administrator Violated ERISA by Providing Misleading Benefit Documents

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A federal court in New Jersey has held that a flexible spending account (FSA) plan administrator violated ERISA by providing plan benefit documents that did not clearly state when a medical expense would be deemed “incurred” under the plan. See *O’Meara v. Cit Group, Inc.* (April 1, 2008).

In this case, the plaintiff, O’Meara, elected to have \$3,000 deducted from her paycheck in 2005 and deposited in her FSA to use for orthodontic work. This decision was based on her prior experience with other companies, IRS rules regarding when medical expenses are incurred for income tax purposes, and upon the information in the New Hire Guide she received when she was hired. The Guide stated that employees must incur “eligible expenses by December 31 of the calendar year in which [their] contributions are made.” The Summary Plan Description (SPD) for the FSA contained essentially the same language.

O’Meara paid for the full cost of her orthodontic treatment in December 2005 and sought reimbursement from her FSA. The plan administrator (her employer) paid a portion of the claim but denied the majority of her reimbursement request because some of the orthodontic treatments extended into the next calendar year.

O’Meara subsequently sued the plan administrator under ERISA. Under the standard set forth by the U.S. Supreme Court in *Firestone Tire & Rubber Co. v. Bruch*, the court applied the *de novo* standard when it reviewed the denial of benefits – that is, it reviewed the decision to determine if it was correct.

The court ruled that the plan administrator breached its fiduciary duties under ERISA by providing misleading plan documents. Under ERISA, a plaintiff can establish a breach of fiduciary duty claim by showing that: (1) the defendant was acting in a fiduciary capacity when it made the challenged representations; (2) these constituted material misrepresentations; and (3) the plaintiff relied on those misrepresentations to his or her detriment.

The court held that O’Meara reasonably interpreted the language of the Guide and the SPD to mean that she “incurred” medical expenses during 2005 if many of the services were performed in 2005 and she paid for them in 2005. The court considered several factors in making this determination, including that: O’Meara’s understanding was based on her experience with other

companies; and the Guide referred employees to IRS Publication 502, which contains the IRS rule that for income tax purposes, a medical expense is incurred in the calendar year in which it is paid. Apparently, the Guide did not clarify that the determination of when a medical expense is incurred is different for FSA purposes than for income tax purposes.

In light of the fact that the money in O'Meara's FSA came directly from her, the court held that the plan administrator had a fiduciary duty to clearly state in the Guide and SPD that its interpretation of the word "incur" was different from the IRS interpretation and different from the interpretation of other companies that administer FSAs. Because the plan administrator failed to do this, the court found that it breached its fiduciary duty by providing misleading benefit documents.

Employers' Bottom Line:

This decision illustrates the importance of ensuring that SPDs clearly communicate plan provisions to plan participants.

If you have any questions regarding this decision or other employment related benefits issues, feel free to contact any of the following attorneys in Ford & Harrison's Employee Benefits Practice Group: Michael Coval, mcoval@fordharrison.com, 404-888-3975; Joelle Sharman, jsharman@fordharrison.com, 404-888-3892; Tiffany Downs, tdowns@fordharrison.com, 404-888-3961; or Jeff Rickman, jrickman@fordharrison.com, 404-888-3925, or the Ford & Harrison attorney with whom you usually work.