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LEGAL ALERT



Legal Alert: Posting Notice of SPD on Firm Intranet Site may not be Sufficient to Meet ERISA Requirements

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Employers increasingly rely on electronic methods to communicate with employees, keep them informed of company policies and even to provide them with benefits documents as required by federal law. While this is usually a convenient and rapid method of communicating with employees, especially those working in geographically diverse locations, employers should make sure that they comply with federal regulations when providing notice of certain benefits as required by the Employee Retirement Insurance Security Act (ERISA).

ERISA requires plan administrators to provide plan participants and beneficiaries a copy of the summary plan description (SPD) and notice of modifications to the plan. The Department of Labor (DOL) has issued regulations permitting plan administrators to provide SPDs through electronic media, as long as the administrator meets the requirements of the regulations.

The importance of complying with the DOL regulations was evident in a recent decision by the Ninth Circuit, in which it found that a plan administrator failed to provide notice of the SPD when it merely posted the document on its intranet site without taking measures to ensure receipt of the notice. See *Gertjeansen v. Kemper Ins. Co.* (April 21, 2008) (unpublished decision). Because the court held that the beneficiary did not receive notice of the SPD, the administrator did not receive the benefit of the SPD's language giving it discretionary authority to determine benefits eligibility.

Usually, when a plan administrator is given discretion to make benefits determinations, a court will review these determinations under an abuse of discretion standard – which means it will uphold the decision unless it is unreasonable. However, in this case the court reviewed the plan administrator's decision *de novo*, meaning that the court evaluated whether the plan administrator correctly or incorrectly denied benefits. Although the court ultimately upheld the plan administrator's decision denying the claim for benefits, the case likely would have been resolved more expeditiously if the abuse of discretion standard had applied.

If you would like a list of the requirements for electronic distribution of SPDs or if you have any questions regarding this issue or other benefits related issues, please contact the Ford & Harrison attorney with whom you usually work or Penny Wofford, a partner in our Spartanburg office at pwofford@fordharrison.com or 864-699-1131.