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THE TOP 7 CONCERNS FOR EMPLOYEE BENEFITS ADMINISTRATORS

For years, employers have been getting a free pass from the courts for a number of different violations of the Employee Retirement Income Security Act of 1974 ("ERISA") relating to the operation of retirement, medical, disability and other employee benefit plans. The Internal Revenue Service and the U.S. Department of Labor have been vigilant in enforcing ERISA against the individuals in control of employee benefit plans, called fiduciaries. However, the courts have not been providing relief for many fiduciary breaches, thanks to their very narrow interpretation of remedies under ERISA. However, the U.S. Supreme Court now appears to be moving in a different direction.

As an aging American workforce becomes increasingly more dependent on privately funded retirement, medical, disability and other employee benefits, changes in how the courts enforce ERISA will have a significant impact on the risk an employer faces when managing employee benefit plans.

The changing judicial backdrop puts greater pressure on employers, plan trustees and other ERISA fiduciaries to consider their legal duties more carefully, and adopt more rigorous procedures that insure compliance.

Particular areas of concern include:

- The prudence of fiduciaries' investment choices for employee benefit plan funds.
- The fiduciaries' ongoing duty to monitor the operation of plans and their investments.
- The review of the costs of plan investments.
- The operation of participant-invested retirement plan accounts.
- The accuracy of disclosures to employees.
- The timing of benefit payments and administration of claims procedures.
- The enforcement of ERISA plan terms.

As the government expands its role in regulating retirement, medical and other employee benefit plans these trends will likely have an increasingly wider reach. Help avoid potential penalties and negative litigation by reviewing your current employee benefits packages and structure to ensure that you remain in compliance with evolving law.

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Evelyn advises on employee benefits, ERISA, executive compensation, medical privacy, federal health reform and related tax law. She writes and speaks extensively and has authored "ERISA Liability," in the MCLE treatise *Massachusetts Employment Law*, the 2015 edition of which will be released soon. She is a member of the Tax Section of the American Bar Association and has been a contributing member of its subcommittee on Government Submissions. Recently, Evelyn's article "Supreme Court's Evolution in Defining Equitable Remedies Under ERISA" was featured in Bloomberg's *BNA Benefits Practitioners' Strategy Guide*.

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