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Fifth Circuit Finds That ERISA Applied to Company Severance

In *Gomez v. Ericsson, Incorporated,* ***2016 WL 3669965*** (5th Cir. 2016), the plaintiff, Mark Gomez, was laid off from his job at Ericsson, Incorporated. The company had a severance arrangement, which was available provided a terminating employee satisfied certain requirements. Specifically, under the terms of the Severance Agreement, Gomez was required to waive certain claims against the company and return all company property. The company determined that Gomez had not satisfied the requirement to return all company property because Gomez had wiped his company computer hard drive, thus preventing the company from accessing certain work information that was only available through that computer. Subsequent efforts to retrieve the deleted files proved unsuccessful.

After being denied his claim for severance through the administrative process, Gomez filed suit under ERISA for the denial of his claim for severance benefits.

Although Gomez has filed suit under ERISA claims, he alternatively sought declaratory relief that ERISA did not govern the dispute. If the court ruled that ERISA did not apply, Gomez then intended file a breach of contract claim in state court.

The district court, however, ruled that ERISA did apply, and ultimately granted summary judgment in favor of the company, finding that the company had not abused its discretion in denying severance pay.

There were two severance arrangements under which Gomez could have been eligible to receive payments: a basic arrangement and a performance-based arrangement known as the Top Contributor Plan. Both arrangements provided for lump-sum payments funded by the company's general assets. The amount of the payment was determined in part based upon the length of notice provided by the terminating employee, as well as the length of the employee's employment. However, the top Contributor Plan required a more complex calculation. In all events, the Plan Administrator would make

both calculations as well as determine eligibility.

On appeal, the Fifth Circuit first recognizes that ERISA is one of the rare examples of a federal statute that does not just preempt state law claims involving a plan, but that it also provides the governing law. Moreover, ERISA also "completely preempts" any otherwise applicable state law, meaning the claim is treated as a federal one that provides federal jurisdiction in an exception to the well-pleaded complaint rule. (citing *Haynes v. Prudential Health Care, 313 F.3d 330,* 334 (5th Cir. 2002); *Giles v. NYLCare Health Plans, Inc., 172 F.3d 332,* 337 (5th Cir. 1999)) While health and retirement plans are perhaps better known examples of plans subject to ERISA and therefore ERISA preemption, the court notes that the statute contemplates that some severance plans will also be subject to ERISA. However, not all severance arrangements have been held to be subject to ERISA.

In distinguishing between those severance arrangements that are subject to ERISA and those that are not, the Fifth Circuit states that it is the existence or nonexistence of an "ongoing administrative program" that is the key determinant. (citing *Clayton v. ConocoPhillips Co., 722 F. 3d 279* (5th Cir. 2013)) The court goes on to state that the circuit's general test for whether a benefit plan qualifies as an ERISA plan requires that: (1) "the surrounding circumstances [must be such that] a reasonable person could ascertain the plan's intended benefits, beneficiaries, source of financing, and procedures for receiving benefits"; (2) the plan must "fall outside of the ERISA exemptions promulgated by the Department of Labor"; and (3) the "employer [must have] established or maintained the plan with the intent to provide benefits to its employees." (citing *Clayton,* 722 F.3d at 294)

The court found that here the breath of administrative activity was clearly satisfied.

Specifically, what the court found significant was that the severance arrangements are ongoing on a large scale, covering over 10,000 employees. Noting that some cases have found severance arrangements that are a single event as not constituting a plan subject to ERISA, the court here found that, aside from demonstrating the need for the uniform regulation that ERISA provides, the sheer size of the plans means that they are a far cry from "single event" plans. Even if a small percentage of covered employees qualified for severance at some point in their careers-and again, the reasons include not just layoffs but resigning in lieu of transfers to positions in different locations or with lower pay-that would result in hundreds of different events that the severance arrangements have to administer. Not surprisingly the court states that given the potential reach of these severance arrangements, Ericsson has established detailed procedures, including the two layers of review that Gomez himself pursued. The arrangements require ongoing administration with the basic plan requiring the administrator to determine whether a "good reason" exists that qualifies an employee's voluntary termination. Both arrangements also require compliance with the waiver and release requirements, and require the administrator to calculate the benefits to be paid.

Accordingly, the fifth circuit found that the Ericsson plans check off most of the factors indicative of ERISA plans, and are governed by ERISA.

Turning to the merits, because the plans give the administrator complete discretion and authority to interpret its terms, the denial is to be reviewed under the arbitrary and capricious standard of review. The court found that the district court did not err in ruling as a matter of law that the plans allowed Ericsson to deny benefits on the ground that Gomez failed to meet the return of property condition.