



ROBINSON & COLE LLP

Employee Benefits & Compensation



#### **Directed Trustee May be Held Responsible if it Follows Orders Contrary to ERISA**

A Massachusetts Federal District Court has found that although a directed trustee has limited discretion over plan assets it holds on behalf of an ERISA plan, such a trustee is still responsible for determining whether orders it receives with respect to such plan assets are consistent with ERISA and the qualified plan document. In the case of Kling v. Fidelity Management Trust Co., the court refused to dismiss a participant's claim alleging that Fidelity had breached its fiduciary duty by following improper orders to offer a company stock fund as an investment alternative in the Harnischfegar Industries Employees' Savings Plan and to invest the company stock fund exclusively in company stock. The participant also claimed that Fidelity should not have accepted contributions in the form of company stock when it knew that such stock was no longer a prudent investment.

Under ERISA, a person is a fiduciary to the extent he exercises any discretionary authority with respect to the management of plan assets. Although Fidelity was a directed trustee and did not have discretionary authority over plan assets, the court found that Fidelity could still be liable if the participants could establish that it had followed directions that were contrary to the plan document or ERISA. The court indicated that Fidelity had a responsibility to carry out only proper instructions that were consistent with the plan document and ERISA.

The court found that Fidelity was a fiduciary and stated that "although Fidelity may not have exercised discretion over plan assets sufficient to convey fiduciary status as to the investment of those assets, Fidelity's duty to distinguish between proper and improper instructions was itself a fiduciary duty." The court allowed the case to proceed to trial where the plan participant will have an opportunity to prove that Fidelity followed orders contrary to the plan document and ERISA in breach of its fiduciary duties.

#### **July 1, 2004 Effective Date Remains for Qualified Pre-Retirement Survivor Annuity Explanations**

Although the IRS has postponed the effective date of the relative value regulations for certain qualified joint and survivor annuity explanations, the effective date was not extended for qualified pre-retirement survivor annuity explanations. Only plans that offer death benefit options, including the ability to name a non-spouse as a beneficiary, are required to provide these explanations. Thus, effective July 1, 2004, plan sponsors subject to these notice requirements should provide qualified pre-retirement survivor annuity explanations that include the extensive information required by the final regulations relating to the relative value and financial effect of each form of benefit provided under a qualified plan.

#### **Employer Bears Burden of Proving It Mailed COBRA Notice**

In Claudio-Gotay v. Becton Dickinson Caribe Ltd., an employee alleged that his former employer, Becton, had violated COBRA by failing to inform him of his right to continue health insurance under COBRA. The First Circuit Court of Appeals found that there were unresolved issues as to whether Becton had failed in its duty to notify the employee of his COBRA rights because Becton had not produced adequate evidence to prove that the COBRA notice had been mailed. Although Becton had a copy of the COBRA notice dated five days after the employee was terminated, as well as a note to the employee two months later stating that the COBRA notice had been sent and that Becton had not received an acknowledgement, the file did not include evidence that these documents had been mailed.

This case highlights the importance of maintaining and following COBRA notice procedures and of thoroughly documenting that COBRA notices are mailed to employees and the date such notices are mailed.

#### **Federal District Court Finds That Cash Balance Plan is Not Age Discriminatory**

In the case of Tootle v. ARINC, Inc., a Federal District Court in Maryland reached the opposite conclusion of the court in the controversial case Cooper v. IBM Corporation, which resulted in a flurry of legislative and regulatory activity regarding cash balance plans. In Tootle, the court found that plan sponsors are not required to calculate accrued benefits in terms of an age 65 annuity and rejected the participant's claim that ARINC's Cash Balance Plan was age discriminatory. In determining that ARINC's Cash Balance Plan was not discriminatory, the court took the approach of calculating benefit accrual by examining the allocation rate and the changes over time to a participant's account balance.

#### **Massachusetts Department of Revenue Confirms Tax Treatment for Individuals Who Enter Into a Same Sex Marriage**

The Massachusetts Department of Revenue has issued a [Technical Information Release](#) on the tax issues associated with same sex marriage. The Release confirms that, for federal income tax purposes, employees will be taxed on the value of benefits provided to same sex spouses. For Massachusetts income tax purposes, if an employee benefit would be exempt from tax if it was provided to an opposite sex spouse, it will be exempt when provided to a same sex spouse. Massachusetts employers may need to customize their payroll and withholding systems to accommodate the conflicting treatment of same sex spouses under Massachusetts and federal tax law.



If an employer has employees who reside in Puerto Rico and those employees are offered 401(k) plan participation, such plan must be qualified under the Puerto Rico Tax Code, which has significant differences from the United States Tax Code. Additionally, there may be securities filings required under U.S. securities laws for a Puerto Rico plan

even if the plan does not offer employer stock as an investment option.

This is an archive of past issues. As a result, it may contain information that is not current.

The logo for Robinson & Cole LLP is displayed in white text on a dark blue, rounded rectangular background. The text "ROBINSON & COLE" is in a larger, bold, serif font, and "LLP" is in a smaller, sans-serif font to the right.

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