It May Be Time to Amend Your ERISA Plan

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The Sixth Circuit Court of Appeals, which hears appeals of federal cases brought in Michigan, Kentucky, Ohio and Tennessee, recently delivered good news to employers with benefit plans under the Employee Retirement Income Security Act (ERISA) in *Rice v. Jefferson Pilot Financial Insurance Company*. Specifically, the court held that, under ERISA, employers are permitted to establish a reasonable period of limitations in covered plans and define when a claim accrues.

In *Rice*, an employee applied for long-term disability benefits through his employer's plan after becoming disabled on May 22, 2002. After being denied benefits and exhausting his appeals under the plan, he filed a lawsuit with the federal district court. That case was voluntarily dismissed by the parties to permit further review by the plan administrator. The plan administrator again denied the claim, and Rice again filed a federal lawsuit under ERISA.

Jefferson Pilot filed a motion to dismiss, arguing that Rice's lawsuit was untimely under the three-year limitations period contained within the long-term disability plan document. The federal district court granted the motion and dismissed the lawsuit. Rice appealed.

Since there were a number of administrative decisions and appeals, as well as two separate lawsuits involved, there were two issues to be decided by the Sixth Circuit: first, was the three-year period of limitations contained within the plan enforceable; and, if so, when did the claim accrue (and, therefore, start the limitations period clock)?

The Sixth Circuit noted that ERISA does not contain its own statute of limitations, thus federal courts are left "borrowing" from analogous state statutes of limitation to apply to ERISA claims. However, choosing an appropriate limitations period is unnecessary when the parties have agreed to a reasonable limitations period by contract. Relying on an earlier unpublished decision, the court held that a reasonable period of limitations within an ERISA plan is enforceable and found that the three-year period within the Jefferson Pilot plan was reasonable.

The next issue was "whether parties can also contract for the date on which an ERISA claim accrues." The court found that they could. The long-term disability plan stated that "[n]o legal action may be brought more than three years after *proof of claim is required to be given."* Therefore, once the "proof of claim is required to be given" the clock started. The plan provided for an elimination period of 180 days and required proof of a claim within 90 days of the elimination period. Thus, the court determined that 270 days from the date of disability, the claim accrued.

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Employers should review their ERISA plans to ensure that they contain a limitations period and a clear accrual date for claims. While a three-year limitations period was deemed reasonable, a shorter period may be upheld. It is important to note, however, that the court found the limitations period reasonable, in part, because it contained a "fail-safe provision that an employee's application is considered denied if no answer is received within ninety days, thus avoiding any situation in which the limitations period would prevent an employee from bringing suit" when the administrative appeals had not yet been exhausted.

If you have any questions about your ERISA plan, or wish to add this amendment, contact your Plunkett Cooney attorney or the author. Inquiries regarding the impact of this decision may also be directed to the firm's Labor & Employment Law Practice Group Leader, Theresa Smith Lloyd at (248) 901-4005; tlloyd@plunkettcooney.com.

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