

ERISA

Pensions and their schemes are under ever increasing scrutiny and pressure from the corporate and public sectors. This month *Lawyer Monthly* speaks to Denise Y. Tataryn, Attorney at Law from Hellmuth & Johnson, to find out more about the Employee Retirement Income Security Act (ERISA) in particular, and its aims to protect pension funds.

Please introduce yourself and your firm.

I have been practicing in the employment law and ERISA litigation areas for over 25 years. My ERISA litigation practice, which represents approximately 80% of my practice, consists of representing claimants on employee benefit claims. Although I handle all types of employee benefit claims, such as pension, disability, life insurance, healthcare, severance claims, most of the claims tend to be disability benefit claims. I assist claimants through every stage of the claim process, including strategic planning before filing a claim, appealing and litigating denied claims, and assisting with ongoing claims.

Hellmuth & Johnson is a Minnesota Top 25 law firm with multi-disciplinary expertise. In addition to employment law and ERISA litigation, the firm represents businesses, organizations and individuals in practices ranging from construction, finance, business and real estate to estate planning and family law.

Please begin by giving overview of the key points of ERISA.

ERISA was enacted primarily to protect the integrity of the pension funds. ERISA created a system of required funding and vesting for pension plans as well as certain disclosure requirements. ERISA also pulled into its coverage welfare benefit plans which are typically unfunded benefits and were not given the same protections as pension plans. ERISA imposes a strict fiduciary code of conduct on those who sponsor and administer benefit plans and preempts a large body of state law.

Who does ERISA apply to and how has it impacted the working environment in the USA?

Virtually all private-sector employers are subject to ERISA, including non-profit organizations.

Governmental entities and churches are the only organizations that are exempt from ERISA. ERISA has impacted the working environment, as employers acting as plan sponsors have a fiduciary relationship with their employees when acting on behalf of the benefit plan, even when administration of plans is handed over to third party administrators or insurance companies. Employers can be liable for misinforming or failing to inform an employee. However, remedies available to employees have been significantly limited due to the broad preemption under ERISA. Employees must follow the claim procedures for benefit claims or risk their claims being denied or even being barred from taking a claim to court. Initial claims and appeals must be submitted timely and administrative remedies must be exhausted before an action can be filed in court.

What are the common challenges and complexities that are usually faced on employee benefit claims?

The standard of review when litigating benefit claims is the biggest challenge facing attorneys who represent claimants. The ERISA statute itself does not address the standard of review. However, the Supreme Court has determined that if an employee benefit plan contains language that grants "discretionary authority" to an administrator, the courts will defer to the administrator's decision making and review the case under an abuse of discretion standard. Some courts have been so deferential that the review virtually eliminates all judicial review of an insurer's determination. As long as a benefit plan contains the special language that allows for a deferential standard of review, claimants have a significant hurdle in meeting their burden of proof. In addition to the standard of review hurdle, claimants' cases are limited to a record review by the court. There is no trial, no live witness testimony nor the ability to add any new

evidence in court. As a result, discovery is very limited. Therefore, if the claimant has not been represented during the administrative claim process and fully developed the record, an attorney will likely be reluctant to take the case.

What, if any, legislative progressions or governmental action do you see for ERISA law?

I believe it will be difficult to obtain significant changes to the ERISA statute regarding benefit claims given the big lobbying power on the part of insurers and some employer groups. However, 20 states have taken action to ban discretionary language clauses through legislation or state insurance commissioner action. By banning discretionary clauses, claimants are then put on an even playing field, because the claim is then reviewed de novo by the court, allowing for a full independent examination of the evidence without affording deference to the carrier's determination. I believe we will continue to see more states taking charge and banning discretionary clauses to give employees the benefit of their bargain. **LM**

Contact:



Denise Y. Tataryn
Attorney at Law
Direct dial: (952) 460-9243
dtataryn@hjlawfirm.com

8050 West 78th Street
Edina, MN 55439
Phn: (952) 941-4005
Fax: (952) 941-2337



HELLMUTH & JOHNSON PLLC
ATTORNEYS AT LAW