



Employer's Severance Agreement Process Did Not Create An ERISA-Covered Benefits Plan

Wesley Covert
08.22.2017

Employers frequently enter into severance arrangements with terminating employees. However, some employees have challenged whether severance arrangements are subject to the Employee Retirement Income Security Act (ERISA). If ERISA applies, suddenly an employer's intended severance arrangement is now an ERISA-covered benefits plan which is subject to significant reporting and disclosure requirements. Courts have generally determined that severance arrangements will not be subject to ERISA unless the severance arrangement is part of an "ongoing administrative scheme." A recent case addressing this issue involved a company's "Voluntary Separation Agreement Process" which provided severance benefits on a discretionary basis to certain managerial employees. Through a set process, the company determined the amount and type of severance package available to particular employees. A terminated employee sued the company, alleging in part, that the company's severance process was subject to ERISA and that the company failed to provide her severance benefits. The court stated that the evidence did not support an intent by the company to create an administrative scheme for its severance arrangements. For example, the arrangements were offered sporadically and in a variety of circumstances. The court held that a reasonable person could not determine the class of intended beneficiaries, the intended benefits, or the process to request benefits under the severance process. Based on this recent case, employers should review their severance arrangements in order to either comply with ERISA, or make changes to avoid ERISA requirements.

Attorneys

Wesley H. Covert

Practice Areas

Employee Benefits and
Executive Compensation

Health and Welfare Benefit
Plans