

FIFTH CIRCUIT HOLDS SEVERANCE PLAN SUBJECT TO ERISA

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The U.S. Court of Appeals for the Fifth Circuit recently upheld a lower court ruling that a company's severance plans are governed by ERISA, triggering a standard of review that favors the company in its dispute over severance payments to a terminated employee. Following his termination, the employee in this case was presented with a severance package under the terms of two severance plans operated by the company--a standard plan and an enhanced plan for top contributors. The standard plan provides either four or eight weeks of "notice pay" (depending on length of service), plus a week of severance pay for each full year of service. Employees eligible for the enhanced plan also receive an additional lump sum of 39 weeks of pay, subject to offsets and deductions for various reasons and to a repayment contingency in the event of re-employment during the severance period. In both plans, the plan administrator calculates the benefits and makes the initial determination of eligibility, including a determination as to whether an employee was terminated because of a permanent layoff or reduction in force. The plan administrator is also charged with determining whether an employee has resigned for "good reason" for purposes of eligibility. Finally, eligibility under both plans is conditioned on the execution of an effective waiver and release of claims.

The release and severance agreement signed by the employee required the return of all company property before he could receive his severance. The employee returned the physical equipment in his possession, but before returning his company-issued laptop, wiped the hard drive of all files, including ones related to work. According to the company, the erased work files were the only copies of the raw data supporting the employee's "final deliverables." As a result, the company denied the employee any severance benefits, on the basis that he had not returned all company property. Following exhaustion of his administrative appeals under the terms of the plans, the employee sued for benefits, commencing with a claim that the plans were not governed by ERISA, which would entitle him to file a contract claim in state court. The district court ruled against the employee, concluding that ERISA governed the case and ruling that the company had not abused its discretion in denying severance pay.

On appeal, the 5th Circuit first tackled the question of ERISA coverage, focusing on the existence or nonexistence of an "ongoing administrative program" as the key determinant of whether a severance plan is governed by ERISA. Pointing to the

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large scale of the plans (covering more than 10,000 employees nationwide), the various reasons that an employee could qualify for benefits (including layoffs and resigning for good reason), the detailed procedures and layers of review established by the company, the discretionary authority accorded the plan administrator, the sometimes complicated benefit calculations required under the plans, and the continuing monitoring of obligations over the severance period, the appeals court agreed with the lower court that the company's severance plans are covered by ERISA. Further, because the plans give the administrator complete "discretion and authority" to interpret their terms, the company decision is reviewed under the "abuse of discretion" standard. Under this standard, overturning the district court decision would require a determination that the denial of severance benefits was arbitrary or capricious.

Acknowledging that there is some merit to the employee's argument that the "return of property provision" in the release and severance agreement goes beyond the mere release of legal claims contemplated by the severance plans, the court nevertheless held that there is sufficient ambiguity in the plans to support the company's interpretation that the return of property condition is not inconsistent with plan terms. Given the absence of language in the plans entitling the employee to severance based solely on the release of legal claims, the court held that it is not inconsistent with the plans to impose other conditions reasonably related to the termination of employment, and that "a provision requiring the return of property at the end of one's employment is reasonable and common." Accordingly, the appeals court upheld the decision of the district court that the plans permitted the company to deny benefits to the employee on the grounds that the employee failed to meet the return of property condition. *Gomez v. Ericsson Inc.* (5th Cir. 2016)