Blitman&King LLP

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CUEd In:

The Law and Business of Employee Benefits for Credit Union Executives

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Welcome to the next issue of CUEd In, our guide to the law and business of employee benefits for credit union executives.

In this issue, we highlight the importantance of understanding the legal framework that governs agreements between executives and credit unions providing for the payment of severance benefits. To demonstrate the concept at issue, we use a recent case involving an executive suing under state law for benefits allegedly promised to her in connection with a severance agreement. The case illustrates how such agreements can fall underneath the vast umbrella of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which generally pre-empts state law. This case is relevant to credit union executives signing severance agreements, or other similar employee benefits agreements, because not being aware of whether ERISA governs the agreement up front can lead to uncertainty and increased expenses in trying to make that determination after the fact in the event of a dispute.

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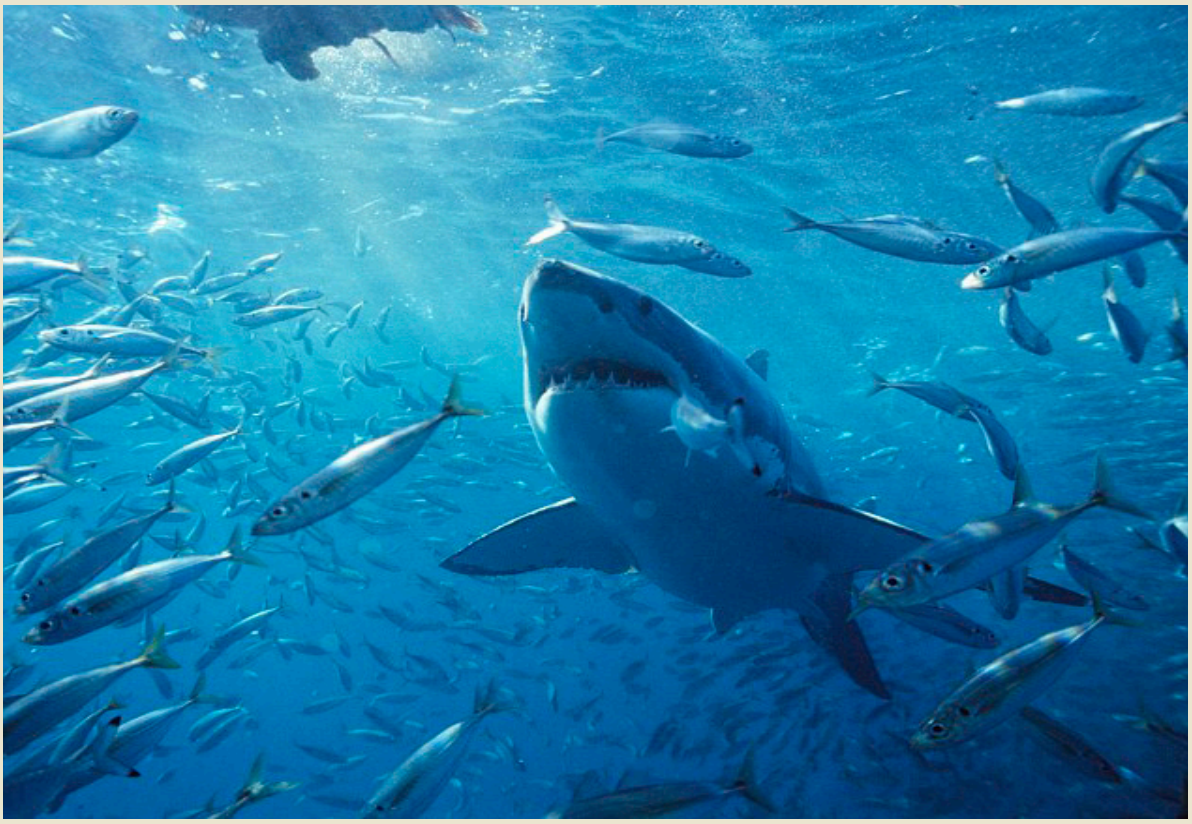
Understanding When ERISA Swallows State Law in a Dispute over Severance Benefits



Executives of credit unions agreeing to severance agreements, or similar employee benefits agreements, need to be aware of what legal regime covers the agreement in the event of a dispute. A recent case involving such an agreement illustrates how certain agreements fall under ERISA, which generally precludes various state law causes of action. Because the executive improperly tried to bring the case under state law, the initial legal arguments were completely pre-empted and additional expenses were incurred.

A hypothetical credit union example based on the facts of Vanderwiel v. Schawk USA, Inc. [1]

Anita Vanderwiel ("Vanderwiel") was an executive employee of Schawk Credit Union ("Schawk"). On January 5, 2012, Vanderwiel was terminated from her employment and provided with a Notice of Termination, which contained information about her severance and other benefits, and included an agreement and general release (the "Agreement"). This Notice indicated that Vanderwiel was entitled to 84 days of severance pay at a rate of $154.25 per day, for a total of $12,957. Vanderwiel accepted the terms of the severance package and signed the Agreement.

Approximately two weeks later, Schawk sent Vanderwiel a second Notice of Termination indicating that the first Notice had been mistaken, in that Vanderwiel was only eligible for 40 days of severance pay, at the same rate, for a total of $6,170. Schawk explained that its Schawk Severance Pay Plan (the "Severance Plan") provided for "a maximum of 8 weeks" of severance pay, and thus the initial benefit calculation using 84 days was a mistake.

Vanderwiel then demanded that Schawk honor the original Agreement as executed on January 5, 2012, and sought full payment of the promised $12,957. Schawk refused to pay this larger amount, and Vanderwiel brought suit in Illinois State Circuit Court, alleging violations of the Illinois Wage Payment and Collection Act. Schawk removed the case to federal district court, alleging that the Severance Plan was an "employee welfare benefits plan." Thus, Schawk argued, Vanderwiel's state law cause of action was completely pre-empted by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Vanderwiel countered that the complaint sought only unpaid wages, and therefore ERISA was not implicated, and the state law cause of action could proceed.

The issue before the federal district court was whether Vanderwiel's state law cause of action was completely pre-empted by ERISA. The court noted that the Seventh Circuit uses a two-prong test, which provides that an individual's cause of action is completely pre-empted by ERISA when: (1) an individual, at some point in time, could have brought his or her claim under Section 502(a)(1)(B) of ERISA to recover benefits under, or enforce the terms of, an ERISA plan; and (2) there is no other independent legal duty that is implicated by a defendant's actions.

With respect to the first prong, whether Vanderwiel could have brought a claim for benefits under Section 502(a)(1)(B) of ERISA, Vanderwiel argued that she could not have because she was seeking wages as opposed to benefits provided for under the Severance Plan. Vanderwiel supported this argument by pointing to the language in the Agreement, which provided that "this payment shall be treated as wages and subject to all taxes and other payroll deductions required by law, and it shall not be considered compensation for retirement plan or other benefit plan purposes." Vanderwiel argued that this language made her claim one to collect wages under state law and not one to collect benefits under ERISA.

The court rejected Vanderwiel's argument, and held that the language of the Agreement did not change the nature of the payment Vanderwiel was entitled to under the Severance Plan.

The court rejected Vanderwiel's argument, and held that the language of the Agreement did not change the nature of the payment Vanderwiel was entitled to under the Severance Plan. First, the court noted that the Agreement distinguished severance payments from wages, as "Severance Pay" was set apart in a separate section from the Agreement than the calculation of Vanderwiel's final wages. Additionally, the court reasoned that the money sought by Vanderwiel was undoubtedly, and by Vanderwiel's own admission, a severance payment and not wages. As a result, the court held that Vanderwiel could have brought the action under Section 502 of ERISA to recover benefits due to her under the terms of the Severance Plan, and thus the first prong of the test was not satisfied.

[1]No. 12-CV-4178 (N.D. Ill., Aug. 13, 2012).

With respect to the second prong, whether Schawk had an independent legal duty to pay the severance claimed separate and apart from its duties under ERISA, the court noted that the parties did not appear to dispute that the Severance Plan was an "employee welfare benefit plan" under ERISA. Further, Vanderwiel admitted that she was a participant under the terms of the Severance Plan, and she signed the Agreement, which expressly made her eligible under the Severance Plan. As a result, the court held that the second prong was not satisfied, because Vanderwiel was effectively demanding only that Schawk owed her the benefits provided for under the Severance Plan. Therefore, the alleged duty owed to Vanderwiel could not be decided without reference to the Severance Plan and was not independent of an ERISA eligible plan.

Due to Vanderwiel's allegations failing to satisfy either prong of the pre-emption test, the court held that Vanderwiel's state law claim was completely pre-empted by ERISA, and federal jurisdiction was therefore proper.

This case illustrates the importance of identifying the applicable law—whether ERISA or state law—when signing a severance agreement, and shaping your legal arguments accordingly in the event that there is later a dispute under the terms of such an agreement.

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