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COURT FINDS HR DIRECTORS AND CFO ACTING AS TRUSTEES AND BENEFIT DECISION MAKERS CAN BE HELD PERSONALLY LIABLE UNDER ERISA FIDUCIARY DUTIES

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While ERISA fiduciaries have often been challenged for allowing an ERISA retirement plan to pay excessive fees and expenses (such as in the context of a 401(k) plan), such claims have rarely been raised against ERISA fiduciaries of a group health plan. However, the Department of Labor (“DOL”) recently sued a group health plan raising excessive fee arguments (*Acosta v. Chimes District of Columbia, Inc., et al.*). In the decision, the court ruled in favor of the plan and fiduciaries, finding the plan fiduciaries met their obligations in relation to fees and set forth guidance on how fiduciaries should review health plan fees and expenses.

BACKGROUND

Under ERISA, persons or entities who exercise discretionary control or authority over plan management or plan assets and anyone with discretionary authority or responsibility for the administration of a plan, are subject to fiduciary responsibilities. Plan fiduciaries for group health plans often include the plan sponsor and plan administrators.

ERISA’s fiduciary duties include acting solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits, defraying reasonable administrative expenses. Fiduciaries must carry out plan functions prudently based on the prevailing circumstances, and in accordance with written plan terms.

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THE CASE

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Chimes DC maintained a self-funded health and welfare benefit plan for the benefit of its employees. Chimes contracted with a third-party administrator (TPA) to process claims and assist with other components of plan operations. The TPA was paid a per-employee-per-month (PEPM) fee as well as a set percentage of total plan assets (consisting of employee and employer contributions). Although other issues were present in the case, the DOL charged Chimes with ERISA fiduciary violations alleging that Chimes did not monitor the group health plan’s fees and expenses.

Despite DOL’s arguments to the contrary, the court found that Chimes met its fiduciary duties to prudently select and monitor its TPA, and paid reasonable fees for services to the plan.

BEST PRACTICES

The analysis used by the court is instructive for other plan fiduciaries as it provides some guidelines and best practices to implement when choosing and retaining service providers. Below is a list of the best practices, including those identified by the Chimes court, which a fiduciary should implement to meet its fiduciary duties to prudently select and monitor service providers:

Selecting a Service Provider

- Issue a Request for Proposal (“RFP”) to more than one vendor to better understand the market and compare services and pricing
- Compare firms based on the same information, such as services offered, market experience, performance guarantees, unique expertise (e.g., Service Contract Act experience), and costs.
- Obtain detailed information about the service provider systems, financial condition, and experience with groups of similar size and complexity
- Ask for references to speak with current clients of the vendor
- If the vendor is new to the plan, ask for an operational review of systems to determine compatibility with the plan functions
- Consider the implementation process and identify challenges which may cause a difficult transition
- Include performance guarantees in the contract to establish accountability and provide recourse if problems arise

MONITORING SERVICE PROVIDERS

- Receive regular and frequent reports detailing service activities
- Seek timely correction of issues
- Ensure corrections are made retroactively and prospectively, if necessary and to the extent possible given the circumstances
- Monitor performance guarantees and assess whether terms were met; if performance guarantees are not met, discuss corrections and any recourse for failure
- Be prepared to switch service providers if poor performance is affecting the plan

As stated by the DOL and the court, ERISA fiduciaries do not have to choose the cheapest option or routinely issue an RFP to potential vendors to act prudently. However, plans must demonstrate prudence and diligence in vetting and choosing service providers that provide a good fit for the organization’s unique challenges.

Once a service provider is chosen, fiduciaries must hold them accountable for delivering effective services, and ensure they are paying reasonable fees.

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EMPLOYER ACTION

This case is a reminder that all ERISA fiduciaries are held to the same high fiduciary standards regardless of whether they are administering a group health plan or a retirement plan. Plan sponsors should implement a process that allows them to prudently select and regularly monitor plan service providers. One key factor in any prudent process is engaging with an experienced consultant that can provide fee and service benchmarks for the industry and periodically issue an RFP to ensure the services and fees align with regular market standards