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ERISA Causes of Action*

ERISA authorizes a variety of causes of action to remedy violations of the statute, to enforce the terms of a benefit plan, or to provide other relief to a plan, its participants or its fiduciaries. This chapter provides a brief overview of those causes of action, which are described in more detail in subsequent sections of this book.

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ERISA Causes of Action—General

Q 1.1 What are the most common ERISA causes of action?

ERISA authorizes a variety of causes of action to remedy violations of the statute, to enforce the terms of a benefits plan, or to provide other relief to a plan, its participants or its fiduciaries. The most common ERISA causes of action include:

(1) claims for the denial of benefits;
(2) claims for breach of a fiduciary duty;
(3) claims for appropriate equitable relief against non-fiduciaries to remedy violations of the act or a plan;
(4) claims for interference with participants' or beneficiaries' exercise of ERISA rights; and
(5) common law ERISA claims.

> **PRACTICE NOTE:** This section focuses on claims that plan participants and beneficiaries typically bring against plans, employers who sponsor plans, and plan fiduciaries because such claims represent the bulk of ERISA litigation. It is important to remember, however, that the Secretary of Labor is authorized under ERISA to bring a variety of claims under ERISA as well. This section does not specifically address claims brought by the Secretary of Labor, but many of the claims the Secretary is empowered to bring to enforce plan terms or ERISA's requirements are similar to the claims that can be brought by plan participants.

Denial of Benefits Claims

Q 1.2 What rights or duties are at issue in claims for denial of benefits?

ERISA § 502(a)(1)(B)[1] provides participants and beneficiaries a cause of action against plans and, in some circuits, plan administrators for the denial of benefits or rights under an ERISA plan. Section 502(a)(1)(B) actions allow participants and beneficiaries to enforce plan terms and to require that plan administrators meet their duties to provide plan benefits in accordance with the plan. ERISA does not require that plans provide specific benefits to plan participants. Rather, the rights of participants and beneficiaries vary by plan and depend upon the terms of the each plan. The plan's terms constitute a contractual promise to provide specified benefits to participants and beneficiaries.

ERISA § 503[2] similarly provides participants and beneficiaries with a cause of action against plans and plan administrators. Section 503 actions allow participants and beneficiaries to enforce the duty that plans and plan administrators have to follow the procedural rules governing the administration of benefits. Those procedures must meet the standards specified by federal law and regulations. For example, the procedures cannot include any procedure that unduly inhibits or hampers the initiation or processing of plan claims.

Q 1.2.1 Who are the proper parties in a claim for denial of benefits?

Under ERISA, a claim under § 502(a)(1)(B) may be brought by either a plan participant or a beneficiary. The proper defendant in an action under § 502(a)(1)(B) is the plan.

Q 1.2.2 What are common allegations in claims for denial of benefits?

Section 502(a)(1)(B) claims often arise where plan fiduciaries or administrators deny a claim for benefits or pay only a portion of a claim for benefits that the plaintiff alleges are due under the plan. Typical claims for benefits under welfare benefits plans seek payment of medical and health benefits, disability benefits, and death benefits. Typical claims for benefits under pension plans seek retirement income or deferred income.

Section 503 claims often allege that administrators failed to provide specific reasons for a denial of benefits; that a written denial notice is unclear or otherwise deficient; or that administrators failed to fully and fairly review a claim.

The following are some examples of typical claims for denial of benefits:

- A participant in a pension plan elects to retire and begins to receive benefit payments. Once his payments begin, he notices that his checks are less than he anticipated they would be. After raising this with his former employer, the employer tells him that it calculated his benefit according to his compensation during the last three years he worked at the company. The participant believed that the plan administrator incorrectly interpreted the plan and that his benefits should have been based on the compensation he earned in his last year on the job. He then sues the plan seeking the higher retirement benefits he believes he is owed.
- An employee is injured in a car accident that leaves her severely injured. Her employer provides a long-term disability plan that provides benefits to those who are completely disabled. The employee applies for benefits, claiming that due to her injuries she is unable to perform any of her current job functions or any other job. The plan denies the claim because based on its review of the employee's medical file, it determines that the employee could work at another job within the factory and is not "completely disabled." The employee sues for the disability benefits she believes are available to her.
- An employee's spouse is told by his doctor that he needs surgery to address a medical ailment. The medical plan that is provided at the employee's workplace covers employees and their spouses, and will pay for the surgery if the procedure is medically necessary as defined by the plan. The plan determines that while the procedure could benefit the employee's spouse, the procedure is not "necessary" and coverage is not

> available. The employee and the spouse sue the plan because they believe that the administrator used an improper interpretation of "necessary" and failed to consider the opinion of the spouse's doctor.

Chapter 11 of this book discusses claims for the denial of benefits in detail.

Q 1.2.3 What elements must a plaintiff generally establish in a claim for denial of benefits?

In a § 502(a)(1)(B) claim, a plaintiff must show that:

(1) a plan is covered by ERISA;
(2) the plaintiff is a participant or beneficiary of the plan; and
(3) the plaintiff was wrongfully denied a benefit owed under the plan.[3]

For a § 503 claim, a plaintiff must show that the plan administrator substantially failed to comply with the procedural requirements set out in § 503 and other applicable rules.[4]

PRACTICE NOTE: Although it is sometimes raised in relation to other ERISA claims, the requirement that a plaintiff exhaust administrative procedures available under a plan before filing a lawsuit is extremely important in claims for denial of benefits. Although ERISA does not specifically require that participants exhaust the plan's administrative procedures, courts have developed the exhaustion requirement for multiple reasons. As one court noted, the doctrine "is necessary to keep from turning every ERISA action, literally, into a federal case."[5]

Q 1.2.4 What relief is available for claims for denial of benefits?

The primary relief available under § 502(a)(1)(B) is that participants and beneficiaries can recover benefits owed under the terms of the plan. Other forms of monetary damages, such as consequential or punitive damages, are not available. ERISA allows for the recovery of attorney's fees. Plaintiffs may also obtain equitable relief.

Under § 503, participants and beneficiaries typically seek an order that the court remand their claim to the plan administrator with instructions to make a proper review of a claim following the appropriate procedures. Plaintiffs may also seek an award of the benefits at issue or a reinstatement of benefits that were denied. However, those remedies are infrequently awarded under § 503.

Breach of Fiduciary Duty Claims

Q 1.3 What rights or duties are at issue in breach of fiduciary duty claims?

ERISA allows participants, beneficiaries, and the Secretary of Labor to bring actions under § 502(a) against ERISA fiduciaries for breach of fiduciary duty. Under § 502(a), plaintiffs may obtain relief against ERISA fiduciaries for breaching the fiduciary duties they owe to the plan and its participants. ERISA fiduciaries can also be liable under § 502(a) for engaging in certain types of specified self-dealing and prohibited transactions under ERISA § 406 that are per se fiduciary duty violations.

Section 502(a)(2) provides participants, beneficiaries, fiduciaries, and the Secretary of Labor the right to sue for damages on behalf of the plan. Section 502(a)(3) provides participants and beneficiaries the right to obtain equitable relief on their own behalf. The Secretary of Labor is also allowed to sue, on behalf of the plan, under § 502(a)(5).

Q 1.3.1 Who are the proper parties in a claim for breach of fiduciary duty?

Under ERISA, a claim for breach of fiduciary duty may be brought by a plan's participants or beneficiaries, or by the Secretary of

Labor.[6] Claims for breach of fiduciary duty may only be brought against persons who were named as fiduciaries in an ERISA plan or those who functioned as fiduciaries because they exercised discretionary control over the operation or administration of an ERISA plan.[7]

Q 1.3.2 What are some common allegations in a claim for breach of fiduciary duty?

Claims for breach of fiduciary duty can involve allegations based on a variety of conduct. Plaintiffs asserting such claims may allege that the defendants breached their duty of loyalty through purported conflicts of interest. They also may allege that the defendants failed to act prudently by failing to manage plan assets appropriately. Other conduct that could serve as the basis of a claim for breach of fiduciary duty may include self-dealing in investing the plan's assets, engaging in prohibited transactions with conflicted parties in interest, failing to satisfactorily fund a plan, failing to diversify the plan's holdings, making misleading representations to plan participants, or failing to monitor the conduct of fiduciaries the defendant appointed to manage the plan.

The following are some examples of typical claims for breach of fiduciary duty:

- Participants in a 401(k) plan were able to make contributions to the plan and were free to allocate their contributions as they wanted among any of the twenty investment options available under the plan. One of the plan options was a fund that invested only in the employer's stock. After the employer's new product line failed to improve sales, the employer's stock declined drastically. The participants sue the fiduciaries of the 401(k) plan, alleging that the fiduciaries violated their fiduciary duties by imprudently allowing participants to continue to invest in the employer's stock.
- A group of employees is considering retirement under the company's existing early retirement program. They tell the vice president in charge of human resources and benefits that they would wait to retire if the company would be announcing in the near future any enhancements to the program. The vice

president says nothing is in the works, even though he knows that earlier that day the CEO recommended to the company's board that a new and more generous early retirement program be approved. Based on what the vice president says, the employees retire under the existing program. A month later, the employees who retired under the earlier program sue the fiduciaries and claim that the fiduciaries breached their fiduciary duties by misleading them into retiring under the older program and that they were harmed because they could not take advantage of the increased plan benefits.

- A plan trustee is responsible for determining how to invest the assets of a pension plan. The trustee owns and operates a separate business and, rather than obtain a loan to increase the business's capital, the trustee loans to his business a large portion of the pension plan's assets. The business performs poorly, goes bankrupt, and never repays the loan. The plan's participants sue the trustee for breaching his fiduciary duty to act in the best interests of the participants and to recover the plan's losses.

Chapter 5 of this book discusses in detail claims for breach of fiduciary duty.

Q 1.3.3 What elements must generally be proved to prevail in a claim for breach of fiduciary duty?

To establish a claim for breach of fiduciary duty, a plaintiff must show that:

(1) the defendants are plan fiduciaries;
(2) the defendants breached their fiduciary duties; and
(3) a cognizable loss to the participants or the plan resulted.[8]

Unlike a claim for denial of benefits, a plaintiff is not typically required to exhaust administrative remedies under the plan, although defendants sometimes raise a failure to exhaust administrative remedies as an affirmative defense.

Q 1.3.4 What relief is available?

Under § 502(a)(2), participants, beneficiaries, and the Secretary of Labor may, on behalf of the plan, recover losses incurred because of fiduciary breaches. In addition, individual participants in defined contribution plans may recover losses incurred in their own accounts. Plaintiffs may hold fiduciaries who breach their fiduciary duties under ERISA personally liable for losses the plan incurred due to the fiduciaries' breach.

Under § 502(a)(3), monetary damages are not available as a remedy. Rather, participants and beneficiaries may obtain *only* equitable remedies because ERISA limits § 502(a)(3) claims to only "appropriate equitable relief." "Appropriate equitable relief" has been interpreted to refer only to relief that was traditionally available at equity. Accordingly, those remedies include equitable restitution, the imposition of constructive trusts, disgorgement of ill-gotten gains that were made at the expense of the plan, injunctions, or specific performance.

Under § 502(a)(5), the Secretary of Labor may obtain injunctive relief, or seek equitable relief such as restitution or imposition of constructive trusts.

ERISA also allows for attorney's fees to be awarded in breach of fiduciary duty claims.[9]

PRACTICE NOTE: The distinction between the relief available under § 502(a)(2) and § 502(a)(3) is critical. Although plaintiffs may obtain money damages on behalf of the plan in a § 502(a)(2) claim, a plaintiff in a § 502(a)(3) claim is limited only to equitable relief.

Knowing Participation Claims

Q 1.4 What rights or duties are at issue in knowing participation claims?

In addition to allowing actions against fiduciaries under ERISA § 502(a)(3), courts have allowed plaintiffs to state claims under § 502(a)(3) against *non-fiduciaries* for their participation in alleged breaches committed by ERISA fiduciaries.[10] A non-fiduciary may not be a proper defendant in a claim under § 502(a)(2). But a claim under § 502(a)(3) may allow a plaintiff to establish a claim against non-fiduciaries for their role in a violation of ERISA or an ERISA plan. A § 502(a)(3) action authorizes an action where a non-fiduciary knowingly participates in (1) any breach of fiduciary duties under ERISA or (2) a prohibited transaction under § 406.

Q 1.4.1 Who are proper parties in claims for knowing participation in a violation of ERISA?

As with other claims under § 502(a), claims under § 502(a)(3) may be brought by participants and beneficiaries. The defendants in such claims are often plan advisors or other parties who deal with an ERISA plan but are not themselves fiduciaries under ERISA.

Q 1.4.2 What are common allegations in knowing participation actions?

Section 502(a)(3) knowing participation claims generally involve allegations that the defendant, who is not a fiduciary, had a role in assisting a fiduciary in violating ERISA or the terms of a plan. The plaintiffs may allege that the non-fiduciary knew that the fiduciary was breaching its duties under ERISA but still provided aid to breach those duties. Plaintiffs often attempt to state a claim by asserting that the non-fiduciary's conduct contributed to the loss that the plaintiffs incurred because the non-fiduciary aided the fiduciary's misconduct.

Q 1.4.3 What elements must a plaintiff generally establish?

A plaintiff in a § 502(a)(3) knowing participation claim must show that:

(1) a fiduciary breached a fiduciary duty under ERISA or engaged in a prohibited transaction;
(2) the defendant had actual or constructive knowledge that the primary violator's activity was improper;
(3) the defendant participated in the improper activity; and
(4) a cognizable loss resulted.[11]

Q 1.4.4 What relief is available?

Under § 502(a)(3), participants and beneficiaries may obtain *only* those remedies that were traditionally available at equity. Those remedies include equitable restitution, surcharge, the imposition of a constructive trust, disgorgement of ill-gotten profits and gains at the expense of the plan, injunctions, or specific performance. Compensatory and punitive damages are not available.[12]

Interference Claims

Q 1.5 What rights or duties are at issue in interference claims?

ERISA § 510[13] provides participants and beneficiaries a right to sue any person that acts adversely to an employee for improper ERISA-related reasons. Section 510 generally prohibits discriminatory conduct by an employer toward an employee. For example, a § 510 action may lie where an employer acts:

(1) to interfere with the attainment of any right provided by a plan;
(2) to retaliate against an employee who exercised a right provided by a plan; or
(3) because an employee provided information about a plan in an inquiry.

Chapter 14 of this book discusses in detail claims for discrimination and interference with benefits rights.

Q 1.5.1 Who are the proper parties for an interference claim?

Under ERISA, a plaintiff in a § 510 claim may be a participant or beneficiary of a plan who has suffered an adverse employment action or disparate treatment because of the defendant's alleged attempt to interfere with his or her rights under ERISA. The defendant in a § 510 claim is most commonly the employer who took the allegedly adverse action against the plaintiff.

Q 1.5.2 What are some common types of interference actions?

Section 510 claims can arise where an employer terminates an employee in advance of the vesting of a pension fund because the employer seeks to avoid contributing to the employee's pension or paying out benefits. Claims can also arise where an employer selectively terminates benefits of a group of employees that have exercised certain benefits rights, or where an employee's salary is cut because the employer sought to pay a lower termination benefit.

What are some examples of claims for interference under ERISA?

- An employee is nearing retirement age. If he is employed at the company on the day he reaches fifty-five, he will enjoy guaranteed retirement benefits and medical benefits. A week before he turns fifty-five, his supervisor tells him he is fired for poor performance, even though no one had previously complained about his work. He sues the employer, claiming that he was fired not because of his performance, but because he was on the verge of obtaining guaranteed benefits that the employer hoped to avoid needing to pay.
- An employee witnesses actions by a plan trustee that she believes violate ERISA. The employee contacts her supervisor to inform him of this issue. The next day she is transferred to a smaller office, with lower pay and less responsibility. She believes the company changed her employment status in response to her complaints about the trustee. She sues the company for retaliating against her.

Q 1.5.3 What elements must a plaintiff generally establish?

Under § 510, plaintiffs must establish (1) an adverse action taken against an employee; and (2) that the action was taken primarily for the improper purpose of interfering with ERISA rights or benefits.[14]

Courts typically analyze § 510 claims under the so-called burden-shifting approach that courts have developed for Title VII discrimination claims.[15] However, the plaintiff always bears the burden of establishing that the defendant acted with the intent to interfere with rights under ERISA.[16]

Q 1.5.4 What relief is available?

Section 510 claims are brought pursuant to ERISA's civil enforcement scheme, which is established under § 502(a). Accordingly, under § 502(a), participants and beneficiaries may recover payments that they are owed under a plan or would be owed absent the defendant's discriminatory intent. In addition, under § 502(a)(3), participants and beneficiaries may generally obtain equitable remedies such as restitution, imposition of constructive trusts, disgorgement, injunctions, or specific performance.

Common Law Claims

Q 1.6 What common law claims may be made under ERISA?

Courts are generally reluctant to add to the express causes of action that Congress created under ERISA. However, in some cases, courts have interpreted ERISA to allow for several additional common law claims on the grounds that Congress authorized the courts to create a code of federal common law to fill in gaps that exist in ERISA. Those courts have created several common law causes of actions. Those actions include:

- restitution in favor of an employer that mistakenly contributes to a plan;
- rescission in favor of an insurance benefit plan where the insured makes a material misrepresentation;
- indemnification and contribution in favor of a fiduciary and against co-fiduciaries responsible for breaches of fiduciary duties;
- estoppel in favor of participants and beneficiaries to enforce benefits promises, even where those promises are not included in a written plan; and
- prejudgment interest in favor of participants and beneficiaries denied benefits.

PRACTICE NOTE: Courts have been very reluctant to recognize common law ERISA claims. They have recognized that with ERISA, Congress created a comprehensive statutory scheme and that it did not simply forget to add additional causes of action. To succeed in establishing a common law claim, a plaintiff generally must be able to demonstrate to the court that the proposed common law claim is supported by ERISA's language, structure and purpose, that ERISA is silent on the issue, and that the common law rule will not conflict with any of ERISA's other provisions.

Chapter 15 of this book discusses in detail claims arising under federal common law.

Notes to Chapter 1

1. 29 U.S.C. § 1132(a)(1)(B).
2. 29 U.S.C. § 1133.
3. Guerrero v. FJC Sec. Servs., Inc., 423 F. App'x 14, 16 (2d Cir. 2011).
4. Lafleur v. Louisiana Health Serv. & Indem. Co., 563 F.3d 148, 154 (5th Cir. 2009).
5. Denton v. First Nat'l Bank, 765 F.2d 1295, 1300 (5th Cir. 1985).
6. 29 U.S.C. § 1132(a)(2).
7. 29 U.S.C. § 1102(a)(2); 29 U.S.C. § 1002(21)(A).
8. *See* 29 U.S.C. § 1132(a)(2).
9. 29 U.S.C. § 1132(g)(1); Hardt v. Reliance Standard Life Ins. Co., 560 U.S. 242, 251–56 (2010).
10. Harris Tr. & Sav. Bank v. Salomon Smith Barney Inc., 530 U.S. 238, 246 (2000).
11. Heritage Equity Grp. 401(k) Sav. Plan v. Crosslin Supply Co., 638 F. Supp. 2d 869, 876 (M.D. Tenn. 2009), citing *Harris Tr. & Sav. Bank*, 530 U.S. at 251; Tr. of Upstate N.Y. Eng'rs Pension Fund v. Ivy Asset Mgmt., 843 F.3d 561, 571 (2d Cir. 2016).
12. CIGNA Corp. v. Amara, 563 U.S. 421, 442 (2011).
13. 29 U.S.C. § 1140.
14. Majewski v. Automatic Data Processing, Inc., 274 F.3d 1106, 1113–14 (6th Cir. 2001).
15. *See* Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 142 (2000).
16. Humphreys v. Bellaire Corp., 966 F.2d 1037, 1043 (6th Cir. 1992).