

ERISA PREEMPTION DEPRIVES NEW HAMPSHIRE DEPARTMENT OF LABOR OF JURISDICTION IN WHISTLEBLOWER CASE

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JANUARY 27, 2012

In a decision issued earlier today, the New Hampshire Supreme Court has ruled that the New Hampshire Department of Labor (DOL) does not have jurisdiction over a whistleblower claim arising from the alleged denial of rights under federal ERISA law.

In *Appeal of A&J Beverage Distribution, Inc.*, the claimant, a former employee of A&J, filed a claim pursuant to NH RSA 275-E (Whistleblower Protection Act) in which he alleged that he was terminated in retaliation for requesting a copy of the Summary Plan Description (SPD) for employer's group health insurance. Following a hearing, the DOL held that claimant was discharged in retaliation for exercising his rights under ERISA to obtain the SPD. The DOL hearing officer awarded the claimant his lost wages, front pay and attorneys' fees. The hearing officer denied the employer's argument that the claim was preempted by ERISA.

In vacating the DOL decision, the Court held that in creating ERISA, Congress intended to subject benefit plans and plan sponsors to a uniform body of benefits law that would not vary from state to state. To accomplish this goal, ERISA was designed to preempt state laws that "relate to" ERISA plans by mandating certain employee benefit plan designs or administration, binds employers to particular choices with regard to plans, or provides alternate enforcement mechanisms.

In this case, the Court found that the claimant was asserting his rights under ERISA to a copy of the SPD. The court further found that in filing a whistleblower claim under RSA 275-E, the claimant was attempting to use state law as an alternate to the enforcement mechanisms provided under ERISA. The Court concluded that as ERISA preempts such alternate enforcement mechanisms, the DOL lacked jurisdiction to hear the case and its decision in the case below is void.

Employees will, on occasion, file wage claims or whistleblower claims that arise from the operation of insurance or other benefit programs that are

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subject to ERISA. In determining how to respond to wage and whistleblower claims, employers should determine whether the underlying issues arise from ERISA plans and make certain that the cases are heard in an appropriate forum for resolving ERISA issues.

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