

Compensation and Benefits Insights

JUNE 2017

Supreme Court Holds that Plans Established by Church-Affiliated Hospitals Are Exempt “Church Plans” Under ERISA

Author, *Donna Edwards*, Atlanta, +1 404 572 2701, dedwards@kslaw.com

In a significant victory for church-affiliated hospitals, the U.S. Supreme Court on June 5th unanimously held in [Advocate Health Care Network v. Stapleton](#) that certain defined benefit pension plans established by church-affiliated hospitals are “church plans” that are exempt from ERISA’s¹ otherwise comprehensive regulation of employee benefit plans.

Background

ERISA generally obligates employers sponsoring defined-benefit pension plans to comply with a comprehensive set of rules designed to ensure plan solvency and to protect plan participants. However, a “church plan” is exempt from those rules (unless the plan elects to be subject to those rules). Thus, a “non-electing” church plan that is a defined-benefit pension plan is exempt from ERISA’s standards for reporting and disclosure, participation, vesting, funding and fiduciary responsibility, and from paying insurance premiums to the Pension Benefit Guaranty Corporation (the “PBGC”).

In its opinion in *Advocate Health Care Network*, the Supreme Court noted that ERISA historically has defined a “church plan” as “a plan established and maintained . . . for its employees . . . by a church.”

In 1980, the Supreme Court explained, Congress amended ERISA to expand that definition by providing that a “plan established and maintained for its employees . . . by a church . . . includes a plan maintained by an organization . . . the principal purpose . . . of which is the administration or funding of [such] plan . . . for the employees of a church . . . , if such organization is controlled by or associated with a church.” The Supreme Court’s opinion labeled such an organization a “principal-purpose organization.”

¹ The Employee Retirement Income Security Act of 1974, as amended.

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

Contact

Kenneth A. Raskin
Chair of the Employee Benefits & Executive Compensation Practice
New York
+1 212 556 2162
kraskin@kslaw.com

Compensation and Benefits Insights

The employers in *Advocate Health Care Network* are three church-affiliated nonprofits that run hospitals and other healthcare facilities and provide their employees benefits under defined-benefit pension plans. The plans were established by the hospitals themselves, and are managed by internal employee-benefits committees.

Current and former employees of these hospital employers filed class actions alleging that the hospitals' pension plans did not fall within ERISA's church-plan exemption because they were not "established by" a church. According to the employees, the 1980 amendment to ERISA allowed principal-purpose organizations to *maintain* such plans in lieu of churches, but kept intact the requirement that churches themselves *establish* church plans.

The District Courts, agreeing with the employees, held that a plan must be established by a church to qualify as a church plan. The Courts of Appeals affirmed.

Supreme Court's Decision

The Supreme Court in *Advocate Health Care Network* reversed the decisions of the Courts of Appeals, holding that under the best reading of the statutory provisions, the plans at issue qualify as church plans, regardless of who established the plans.

The Supreme Court noted that the three federal agencies responsible for administering ERISA – the Internal Revenue Service, the Department of Labor and the PBGC-have long read the statutory provisions at issue to exempt plans like the hospitals' from ERISA, reasoning that the 1980 amendment to ERISA expanded the definition of church plan to include any plan maintained by a principal-purpose organization, regardless of whether a church initially established the plan, and that the internal benefits committee of a church-affiliated nonprofit counts as a "principal-purpose organization."

Interpreting the statutory language, the Supreme Court explained that the term "church plan" initially "mean[t]" only "a plan established and maintained . . . by a church." But under the 1980 amendment to ERISA, the original definitional phrase also now "includes" another plan—"a plan maintained by [a principal-purpose] organization." The Supreme Court stated that the use of the word "include" is not literal, but tells readers that a different type of plan should receive the same treatment as the type described in the old definition. Thus, the Supreme Court concluded, because Congress deemed the category of plans "established and maintained by a church" to "include" plans "maintained by" principal-purpose organizations, those plans—and all those plans—are exempt from ERISA's requirements. The Supreme Court supported its conclusion with several other interpretive principles as well as a review of the relevant legislative history.

The Supreme Court was not asked to, and did not, consider whether the hospitals had the needed association with a church or whether their internal benefits committees counted as principal- purpose organizations for purposes of the church plan ERISA exemption.

In her concurring opinion, Justice Sotomayor expressed concern that the Supreme Court's holding means that "scores of employees – who work for organizations that look and operate much like secular businesses – potentially might be denied ERISA's protections." She argued that "despite their relationship to churches," hospitals such as the ones involved in the case "operate for-profit subsidiaries . . . , employ thousands of employees . . . , earn billions of dollars in revenue . . . , and compete in the secular market with companies that must bear the cost of complying with ERISA."

Compensation and Benefits Insights

Insights

The Supreme Court's decision in *Advocate Health Care Network* provides comfort for church-affiliated hospital employers seeking church plan status for plans that were established by the hospitals and that are managed by internal employee-benefits committees. However, such employers still must conclude that the hospitals satisfy the needed association with a church and that the internal benefits committees count as principal-purpose organizations in order for church plan status to apply.

King & Spalding would be happy to assist you with any questions you have about the Supreme Court's decision in *Advocate Health Care Network*.

July and August 2017 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

Author, *Ryan Gorman*, Atlanta, +1 404 572 4609, rgorman@kslaw.com

Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for the next two months. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is generally delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
July 29 (no later than 210 days after the end of the plan year in which the change was effective)	Summary of Material Modifications	Deadline for plan administrator to distribute summary of material modifications reflecting any changes to the summary plan description (SPD) arising from any plan amendments adopted during prior year (unless a revised SPD is distributed that contains the modification).	Retirement Plans Health & Welfare Plans
July 31 (the last day of the 7th month following the plan year)	DOL Form 5500	Deadline for plan administrator to file Form 5500 (Annual Return/Report of Employee Benefit Plan) for prior year. This deadline is extended 2 ½ months if the plan administrator files Form 5558.	Retirement Plans Health and Welfare Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form 8955-SSA	Deadline for plan administrator to file Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits). This deadline is extended by 2 ½ months if the plan administrator files a Form 5558.	Retirement Plans
July 31	Patient Centered Outcomes Research Institute (PCORI) Fee	Deadline for self-insured health plans to pay a fee for 2016 plan year using IRS Form 720. Note that the fee is not tax deductible. Insurers are responsible for paying the fee on behalf of insured plans.	Self-Insured Group Health Plans (including retiree plans)
August 14 (within 45 days after the close of the second quarter of plan year)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the second quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant-directed investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the second quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
August 15 (the 15th day of the 8th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a 3-month extension by filing a Form 8868.	Qualified Retirement Plans* Voluntary Employee Beneficiary Associations

* Qualified Retirement Plans include all defined benefit and defined contribution plans that are intended to satisfy Internal Revenue Code §401(a).