



CLIENT ACTION Bulletin

Employee Benefits

Employee Benefits on the U.S. Supreme Court's Docket

SUMMARY Several cases before the U.S. Supreme Court have direct or indirect implications for employer-sponsored retirement and healthcare benefit plans.

This *Client Action Bulletin* summarizes these cases of interest for plan sponsors.

DISCUSSION **Federal Subsidies for Health Exchange Insurance Purchases**

The Court will hear arguments March 4 on whether the federal premium tax credit subsidies available under the Affordable Care Act (ACA) are available to people in all states or only to those buying coverage in states with a state-run exchange (*King v. Burwell* (No. 14-114)).

If the Court restricts the subsidies to those in the 14 states and the District of Columbia that have established state-run exchanges, people in the remaining 37 states could lose the subsidies (unless the states or the Congress and the regulators with ACA oversight act quickly to resolve this issue). Federal agencies – particularly the IRS, the Department of Labor, and the Department of Health and Human Services – will have to amend regulations accordingly.

For group health plan sponsors, the effects of the Court invalidation of the subsidies will depend on different aspects of the ACA requirements. Large employers subject to the employer shared responsibility mandate in states using the federal exchange would escape the penalties, while those in states with a state-run exchange would remain subject to the penalties. The penalties apply to the large employer if its employees receive coverage from the exchange and they receive a subsidy. Small employers will face the decision of whether to offer coverage in federal exchange states, because their workers would not be eligible for subsidies, or not to offer coverage in states with state-run exchanges, because workers would be eligible. Potentially more significant is the “death spiral” that is likely to occur under an adverse ruling: Because relatively healthy people now receiving the subsidies in the federal exchanges might forgo purchasing insurance, those who continue being insured are likely to be less healthy, thereby driving up the cost of health insurance. (See also, [Legality of ACA Subsidies: What Does the Supreme Court's Recent Decision to Hear This Case Mean for Health Plans?](#))

Statute of Limitations Period for Suits against Plan Fiduciaries

The Court heard arguments on Feb. 24 on whether 401(k) plan participants may file a suit challenging the retirement plan's fiduciaries' actions that took place before the six-year statute of limitations period allowed under ERISA for filing a claim (*Tibble v. Edison International* (No. 13-550)). The plaintiffs allege that plan fiduciaries breached their duty of prudence by initially offering higher-cost retail-class mutual funds when lower-cost institutional-class funds were available, and that the fiduciaries failed to properly review and monitor those initial investment selections. In general, the tolling period begins on the date of the last instance of a breach or violation or on the date on which a fiduciary failure could have been corrected.

The U.S. Solicitor General filed a brief arguing that the appellate court failed to recognize that the fiduciaries owed a continuing duty of prudence and thus breached their duty by failing to research fund options and offer the institutional-class funds during the six-year period prior to the suit.

For sponsors of retirement plans and perhaps other plans covered by ERISA, the Court's decision is expected to address fiduciaries' duty to consider past decisions and whether plan participants may allege a “continuing violation” theory to evade the six-year limitations period for filing suits.

Same-Sex Marriages

The Court will consider the constitutionality of state laws (in Kentucky, Michigan, Ohio, and Tennessee) barring same-sex marriages and the recognition of same-sex marriages lawfully performed out of state (*Obergefell v. Hodges* (No. 14-556)). The Court has to date not scheduled oral arguments; the deadline for petitioners' and respondents' briefs extends into April; and the Court's term ends in June.

The Court's decision has the potential to legalize same-sex marriages in all 50 states.

All employers could be affected by a Court ruling that broadly agrees with the plaintiffs, particularly in states that do not allow or recognize same-sex marriages. For these retirement or health benefit plan sponsors, a review of the programs with legal counsel and other professional advisors would be appropriate. Communications materials, payroll and other administrative systems, and benefit programs that are not subject to federal laws also may have to be modified.

Collectively Bargained Retiree Health Benefits

In its unanimous ruling, the Court formally invalidated what has become known as the "Yard-Man inference," which a lower federal appellate court applied to find that retiree health care benefits vest for life in the absence of specific language to the contrary in a plan document or collective bargaining agreement (*M&G Polymers USA, LLC v. Tackett* (No. 13-1010, Jan. 26, 2015)). The Court, remanding the case to the U.S. Court of Appeals for the Sixth Circuit, said that "courts should not construe ambiguous writings to create lifetime promises...When a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." In a separate, concurring opinion, four justices warned that lower courts may consider extrinsic evidence when interpreting what labor and management "intended" when considering vested or temporary benefits, including bargaining history, if the relevant documents are found to be ambiguous.

For retiree health plan sponsors and labor representatives, the decision reemphasizes the need for clarity in drafting or reviewing collective bargaining agreements or contracts outside the collectively bargained context, particularly those relating to health and welfare or other temporary benefits.

ACTION For additional information about these U.S. Supreme Court cases and their implications for retirement or health benefit plans, please contact your Milliman consultant.