New Jersey Employee Benefits

I. Overview

Since the dawn of recorded history, the employer-employee relationship has been subject to negotiation and regulation. The Code of Hammurabi required an employer to pay hired day laborers six gerahs per day during the summer months and five gerahs per day during the rest of the year, and regulated the wages of skilled artisans.[1] In recent years, Congress and the New Jersey Legislature have enacted a number of laws that substantially affect the terms and conditions of employment, including the structure of retirement plans and other employee benefits. Failure to comply with these laws can have a disastrous effect on both employers and employees.

The Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act") is the centerpiece of employee benefits legislation in the United States. Enacted by Congress in response to perceived abuses in the administration of retirement plans and other employee benefits,[2] ERISA preempts many state laws and imposes a comprehensive statutory and regulatory regime on a vast number of employee benefit plans. The New Jersey Law Against Discrimination, *N.J.S.A.* § 10:5-1, *et seq.*; the New Jersey Wage and Hour Law, *N.J.S.A.* § 34:11-56a, *et seq.*; the New Jersey Family Leave Act, *N.J.S.A.* § 34:11B-1, *et seq.*; and several other pieces of legislation address employee benefits to a more limited extent, but ERISA remains the primary — and in many instances, the ultimate — arbitrator of an employer's obligations and an employee's rights with respect to employee benefits.

A. Employee Benefits Legislation in New Jersey before ERISA

On the eve of ERISA's enactment in 1974, the New Jersey Legislature passed the Private Nonvested Pension Benefits Protection Tax Act, 1973 N.J. Laws ch. 124 (the "PNPBPTA"). Ostensibly, the Legislature's intent with passage of the PNPBPTA was to protect long-term employees whose pension credits were forfeited in a plant shutdown. When an employer closed a plant, the PNPBPTA imposed a tax on the employer equal to the value of pension accruals forfeited by employees with 15 or more years of plan participation. New Jersey used the tax revenues from the plant shutdown to pay those employees their pensions.[3]

Although the New Jersey Legislature's intentions may have been for the best, the PNPBPTA illustrated the Legislature's failure to fully grasp the mechanics of plan terminations. *If plan benefits were already funded when a plan terminated*, federal tax law at the time required unvested participants to vest in their pensions when the plan terminated. In other words, if there was money to pay the benefits, even employees who were unvested were protected when the plan terminated. However, if there was not enough money to pay the benefits, even vested employees were unprotected. In short, the real problem was funding, not vesting.[4]

Because the New Jersey Legislature failed to grasp the mechanics of plan terminations, the PNPBPTA had a different effect than the Legislature intended. The PNPBPTA taxed an employer in order to protect unvested employees but did nothing to protect vested employees. If a plan terminated without enough assets to pay vested benefits, the vested employees wouldn't receive a penny. In

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[1] *See* ERIC. T. SWARTZ, THE OLDEST CODE OF LAWS IN THE WORLD: THE CODE OF HAMMURABI, KING OF BABYLON 28 (CreateSpace 2009).
[2] HR No. 533, 93d Cong., 2d Sess. reprinted in 1974 U.S. Code Cong. & Admin. News 4640.
[3] *See* JAMES A. WOOTEN, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974: A POLITICAL HISTORY 204 (University of California Press 2004).
[4] *See id.*

contrast, unvested employees with less seniority were guaranteed that their pension would be paid in full.[5]

While the PNPBTA did not provide employees the full protection the New Jersey Legislature sought, in one respect the PNPBTA did accomplish the Legislature's goal. The specter of other states enacting similar pension protection acts tipped the balance in favor of comprehensive federal legislation. Business groups and labor unions that previously had balked at a federal regulatory scheme now saw federal preemption as the panacea to the growing number of state proposals to regulate employee benefits.[6]

B. ERISA

Shortly after the New Jersey Legislature passed the PNPBPTA (and partially in response to the PNPBPTA), Congress enacted the Employee Retirement Income Security Act of 1974 ("ERISA" or the "Act") and, on September 2, 1974, President Gerald Ford signed ERISA into law.

ERISA was designed to address a number of perceived problems and abuses with respect to employee benefit plans. In particular, with the passage of ERISA, Congress sought to:

- establish equitable standards of plan administration;
- mandate minimum standards of plan design with respect to the vesting of plan benefits;
- require minimum standards of fiscal responsibility by requiring the amortization of unfunded liabilities;
- ensure the vested portion of the unfunded liabilities against the risk of premature plan termination; and
- promote a renewed expansion of private retirement plans and increase the number of participants receiving private retirement plans.[7]

These goals were accomplished (or sought to be accomplished) through a number of provisions. For defined benefit plans, ERISA imposes a minimum funding requirement and requires future costs to be amortized in a manner that ensures that funds will be available to employees at retirement. ERISA also imposes minimum in-service vesting requirements so that longer-term employees vest in their pension benefits before they attain a normal retirement age. And ERISA generally preempts any and all state laws insofar as they relate to any employee benefit plan covered by ERISA.

II. Selection and Design of the Employee Benefits Program

One of an employer's first considerations (if not *the* first consideration) in the selection and design of an employee benefits program is whether one or more of the employee benefits offered by the employer will be subject to ERISA and the Code.[8]

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[5] *See id.*
[6] *See id.*
[7] HR No. 533, 93d Cong., 2d Sess. reprinted in 1974 U.S. Code Cong. & Admin. News 4640.
[8] Unless otherwise indicated, all references to the "Code" refer to the Internal Revenue Code of 1986, as amended.

A. *Employee Benefit Plans Subject to ERISA*

Because ERISA's reach is broad, many benefits that at first blush appear to fall outside the scope of ERISA are covered by the Act. Courts have traditionally used a three-part test to determine whether an employee benefit arrangement is subject to ERISA:

- whether the arrangement is exempt under the Act or regulations promulgated by the Department of Labor
- whether the arrangement constitutes a plan, fund, or program, and
- whether an employer or employee organization established or maintains the arrangement to provide benefits to employees.[9]

1. Application of ERISA

ERISA generally applies to two types of employee benefit plans — "employee pension benefit plans" and "employee welfare benefit plans." An "employee pension benefit plan" is defined by the Act as:

> [A]ny plan, fund or program which was heretofore or is hereafter established or maintained by an employer, or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund or program ––
>
> (i) provides retirement income to employees, or
>
> (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.[10]

Profit-sharing retirement plans, stock bonus plans, money purchase plans, 401(k) plans, employee stock ownership plans ("ESOPs"), and defined benefit retirement plans are all examples of an "employee pension benefit plan."

An "employee welfare benefit plan" is defined by ERISA as:

> [A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer, or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in 29 U.S.C. Section 186(c) of this title [section 302(c) of

[9] *See Thompson v. American Home Assur. Co.*, 95 F.3d 429 (6th Cir. 1996).
[10] ERISA § 3(2)(A). *See also* DOL Regs. § 2530.3-2.