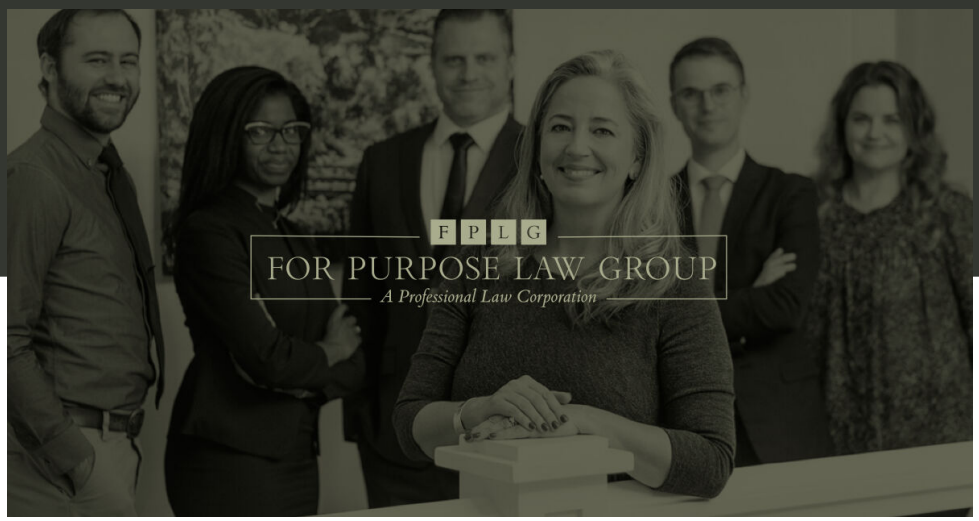
FPLG
FOR PURPOSE LAW GROUP
A Professional Law Corporation

FPLG: CIVIL LITIGATION

Long-Awaited ERISA Decision Reached

08.15.17 | Linda J. Rosenthal, JD



Late last year, we previewed a pending Supreme Court case involving pension plans of religiously affiliated nonprofits.

On June 5, 2017, the ruling was issued: All eight justices participating in *Advocate Health Care Network v. Stapleton* agreed that the "church plan" exception to ERISA coverage for employees is broad enough to include all religiously-affiliated facilities including ones that were not originally established directly by a church. New Justice Gorsuch was not involved in this decision.

This is good news for hospitals, universities, and other religiously affiliated nonprofits who will save money by not having to abide by the worker-protection rules of the Employee Retirement Income Security Act. Of course, the losing side – a group of current and former employees of these institutions – are not pleased at all. These plaintiffs had argued that allowing their employers to opt out of the worker-protection ERISA rules has a detrimental financial effect on them and perhaps some hundreds of thousands of others similarly situated.

When Does ERISA Apply?

In "Supreme Court Will Decide ERISA Church Plans Exception," we explained that the federal Employee Retirement Income Security Act (ERISA) protects pension benefits of most American workers:

> *Without ERISA, your pension may be at risk without you ever knowing it. If you are a participant in a defined benefit plan covered by ERISA, federal rules specify the amounts that employers are required to contribute on an annual basis so that your plan has enough money to pay you benefits when they are due. Further, through the federal Pension Benefit Guaranty Corporation (PBGC) participants are guaranteed a level of retirement benefits if for any reason the employer defaults on its obligation to pay benefits. In other words, in a plan covered by ERISA, your benefits are insured by the PBGC in the same way your balance in a federally insured bank account is insured by the FDIC.*
>
> *If a plan is not subject to ERISA, there is no such federal protection. Uncovered plans are subject only to the terms of the plan document. While the 'rights of employees and retirees are determined by state law,' there isn't the same level of protection. 'That's why ERISA was enacted in the first place.'*

In addition, "among the provisions set by ERISA are requirements that pension plans meet certain minimum funding requirements, and that plans do not discriminate in their benefits by doing such things as providing comprehensive health insurance coverage for men but not women."

On December 2, 2016, the Supreme Court issued writs of certiorari in 3 consolidated cases involving religiously affiliated, nonprofit, healthcare employers. This issue had been bubbling up for some time, and the lower courts hearing these cases did not agree on the outcome; that is, the proper scope of the "church-plan exception" to ERISA. This is a typical situation in which the U.S. Supreme Court steps in to resolve the dispute.

ERISA Exception for "Church Plan"

Since ERISA is intended to provide broad protection for workers, there are just a few exceptions written into this landmark federal statute. One key exception is for "church plans"; that is, plans intended to apply to clergy and other church employees.

> *When Congress enacted ERISA in 1974, it exempted church plans because it felt that federal regulation might 'be regarded as an unjustified invasion of the confidential relationship that is believed to be appropriate with regard to churches and their religious activities.'*

There are certain requirements to meet this exception. Originally, the plan had to be "established by a church."

ERISA, though, has been amended a number of times. The current question is whether the language changed enough to now include nonprofits that are religiously affiliated even if they weren't originally created by a church.

High Court Approves Broad "Church-Plan" Exception

Although this litigation involves religious hospitals and healthcare facilities, the outcome doesn't turn on the "religion" aspect. Instead, it's a matter of the interpretation of the language of the ERISA statute; that is, "statutory construction." (It also isn't limited to the healthcare field, but can include other religiously affiliated institutions including – for instance – universities.)

In other words, did Congress intend to broaden the "church-plan" exemption beyond the original requirement that a plan be established by a church, and does it now apply to institutions formed by nonprofit organizations instead of directly by a church?

The United States Supreme Court says yes: Under the "plain language" of the current statute, religiously affiliated hospitals and healthcare organizations can fit into the "church- plan exception" even if they were created by nonprofit organizations.

Certain issues remain unsolved due to the complexity of the ERISA statute.

And while these nonprofit employers may, under the rules of statutory construction, qualify under this available exception, it's clear from the opinions that some of the justices – Sonia Sotomayor, in particular – have concerns "about the potential consequences of leaving employees of these organizations unprotected by ERISA."

Some commentators on this decision leave no doubt about their reactions; see, for instance, an article titled "Supreme Court Ruling Could Let Catholic Hospitals 'Pocket' Millions in Retirement Funds": "The impact of the decision means Catholic hospitals, which employ tens of thousands of low- to middle-income workers, can now generally avoid the pension and health insurance protections required by federal law."

Conclusion

The question before the courts – which had produced uneven results in the past – has been resolved as a matter of law. Nevertheless, this resolution has unsatisfying ramifications which Congress may or may not choose to remedy by legislation.