



## Court Holds That Severance Policy is Not an ERISA Plan: *Okun v. Montefiore Medical Center*

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The U.S. District Court for the Southern District of New York has provided clear and useful guidance on a common ERISA question: what constitutes an ERISA-governed benefit plan for severance benefits? In *Okun v. Montefiore Medical Center*, No. 11 Civ. 9615 (PGG)(S.D.N.Y. Sep. 10, 2013), the court reviewed a severance package for a pediatrician employed by a medical center and held that the arrangement did not constitute an ERISA-governed plan. In doing so, the *Okun* court outlined the criteria that federal courts have developed to determine ERISA's application to severance policies.

The Background. Plaintiff Alexander Okun (Dr. Okun) was employed for 23 years as a pediatrician at the Montefiore Medical Center (Montefiore), and as an associate professor of pediatrics at the affiliated Einstein College of Medicine. Montefiore had a severance policy that did not require severance payments when an employee was terminated for cause. The policy also provided that it could be terminated or amended at any time by Montefiore. On May 1, 2011, Dr. Okun gave notice that he had accepted a position in Wisconsin, and that he would leave Montefiore in September 2011. On May 13, 2011, Montefiore terminated Dr. Okun for cause on grounds that Dr. Okun later disputed. As a result of the for cause termination, Montefiore did not pay Dr. Okun any benefits pursuant to its severance policy.

Dr. Okun filed suit in federal district court, claiming that he was denied benefits due under a plan governed by ERISA and was entitled to its procedural protections. Montefiore moved to dismiss the case, arguing that the severance policy was not an employee welfare benefit plan under ERISA, and that the federal court therefore lacked subject matter jurisdiction to decide the claim on the merits.

The Court's Ruling. The court observed that a program to pay severance benefits may constitute an employee welfare [benefit] plan if it meets a well-established test based on rulings of the U. S. Supreme Court and lower federal courts. Especially with respect to a severance policy, an ERISA-governed plan must provide that the sponsoring employer has created an ongoing administrative program. By contrast, a one-time calculation of a severance payment using a fixed formula will not

qualify as an ERISA-governed plan. See *Fort Halifax Packaging Co. v. Coyne*, 482 U.S. 1 (1987).

The *Okun* court therefore weighed the following factors:

1. whether the employer's undertaking or obligation requires managerial discretion in its administration;
2. whether a reasonable employee would perceive an ongoing commitment by the employer to provide employee benefits; and
3. whether the employer was required to analyze the circumstances of each employee's termination separately in light of certain criteria.

Applying the "managerial discretion" criterion, the court considered whether Montefiore exercised managerial discretion to determine initial eligibility for the severance benefit, the amount of severance, and the timing of the severance payments. The court found that Montefiore only exercised managerial discretion in determining initial eligibility for severance and did not exercise discretion with respect to the amount or timing of severance payments. This argued against the existence of an ERISA plan.

The court applied the second criterion by inquiring "whether the severance policy is subject to termination or amendment by the employer," reviewing "the scope of the employer's ongoing responsibilities in administering the severance policy," and asking "whether the terms of the severance policy are clear and definite and have a definite termination date." Under the *Okun* facts, the court found nothing to suggest that an employee could reasonably perceive the need for an on-going administrative program, and noted that Montefiore could terminate or amend the program at any time.

The court evaluated the third criterion by inquiring "whether employees are required to look for other jobs, be available to [the employer] to work as needed [or do anything else that would require an individualized determination to receive benefits going forward." The court found that Montefiore's severance policy did not impose any such requirements. In particular, once an employee qualified for severance, Montefiore's severance payments were made on the basis of a simple arithmetical calculation; no individualized, discretionary analysis by the employer was required.

Because most of the factors for the existence of an ERISA plan were not present, the court held that the Montefiore severance program was not a plan governed by ERISA, and Dr. Okun's claim was dismissed.

The Significant Lesson. *Okun* provides a practical demonstration of the test to determine whether a severance policy constitutes a plan governed by ERISA, especially the requirement for an "ongoing administrative program." Employers should evaluate their own severance policies to determine whether such policies provide for one-time non-discretionary calculations of severance payments using a fixed formula and thus would not fall under ERISA, or, by contrast, create on-going administrative duties involving employer discretion and thereby trigger the obligations and administrative claim procedures that ERISA imposes.

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