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Misclassified Employees Are Not Barred From Recovering Damages Based on Value of ERISA Plan Benefits They Should Have Been Provided: Gray v. FedEx Ground Package System, Inc.

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A federal court has held that plaintiffs who proved they had been misclassified as independent contractors, and should have been considered employees, could recover money damages under state law based on the value of the ERISA plan benefits that the defendant employer failed to provide them. In *Gray v. FedEx Ground Package System, Inc*., No. 4:06-CV-422-JAR (E. D. Mo. September 5, 2014), the court highlighted the limits of ERISA?s powerful preemption clause and of its impact on state law claims.

The Background. The *Gray* decision was the latest in a long-running case brought by plaintiffs who were full-time package delivery drivers for the defendant package delivery service, FedEx Ground Package System, Inc. (?FedEx?). Plaintiffs asserted, among other things, a claim under state law that FedEx had misclassified them as independent contractors when, in fact, they were employees entitled to benefits under FedEx plans for medical, dental, vision, disability, life, travel and accident insurance (?the FedEx welfare benefit plans?) and under FedEx?s Pension and 401(k) retirement plans. The plaintiffs also claimed that FedEx had wrongfully withheld information from them that prevented plaintiffs from determining whether they would be eligible for benefits under those plans.

FedEx denied that it had misclassified the plaintiffs? employment status, and contended also that the plaintiffs could only have pursued these claims for benefits in a federal multi-district case in Indiana. There the court had dismissed the claims without prejudice because that set of plaintiffs had not exhausted administrative remedies. FedEx also contended in *Gray* that plaintiffs? state law claims for money damages were barred by ERISA?s preemption clause. On these two grounds, FedEx moved the court to grant summary judgment against the plaintiffs.

ERISA?s section 514(a) generally provides that, except as limited in section 514(b), ERISA?s provisions ?shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan? covered by ERISA. The U. S. Supreme Court and lower federal courts have held that a state law, including a state?s common law, ?relates to? an ERISA plan if the state law (1) expressly refers to the ERISA plan or (2) has a connection with it. ERISA plan defendants typically invoke ERISA preemption to dismiss state law claims when possible, because the remedies under ERISA are usually much more limited than those allowed under state law, for example, compensatory and punitive damages.

<u>The Court?s Ruling</u>. The *Gray* court acknowledged that FedEx had always maintained that the plaintiffs were independent contractors, not employees eligible for the disputed plan benefits, but the court concluded that, under state law, FedEx controlled the manner and means of the plaintiffs? work to such an extent that they were in fact FedEx employees. Among other factors, FedEx controlled the drivers? work dispatches and routes, required that packages be dropped off and picked up at certain times, and determined what the drivers wore. However, until the court had resolved this question of employee status, the plaintiffs could not have asserted their claims in the federal case in Indiana, and the*Gray* court therefore rejected that defense.

Turning to FedEx?s preemption defense, the court noted that plaintiffs? expert had opined that each plaintiff lost $6,000 annually for benefits that such plaintiff otherwise would have received under the FedEx welfare benefit plans, and $1,000 annually for estimated benefits, including matching 401(k) contributions, under the FedEx retirement plans. FedEx did not assert that plaintiffs? state law misrepresentation claims explicitly ?referred to? the FedEx plans, but contended that they were preempted because they had a ?connection? to the plans

Considering several factors under cases in the U. S. Court of Appeals for the Eighth Circuit, in which the *Gray* court is located, the court rejected FedEx?s preemption argument. The court held that the plaintiffs were not seeking to recover benefits due under the FedEx plans, enforce rights under the plans or clarify rights to future benefits, pursuant to ERISA?s civil remedies section 502(a). They sought instead to recover damages arising from their misclassification as independent contractors,*and the damages would be paid by FedEx, not the plans.* Thus, their state law claims ?would not have any significant economic impact on FedEx?s plans.? In addition, the dispute was between FedEx and the plaintiffs as employees, not as ERISA participants, and thus would not affect relations among the ERISA entities (such as the plans and plan administrators), or impact the structure of the plans or plan administration. Although the plaintiffs? claims required some reference to the plan documents in order to calculate damages, this relationship was too tenuous to trigger ERISA preemption. FedEx?s summary judgment motion was therefore denied.

<u>The Significant Lessons</u>: The broad scope of ERISA preemption has been tested many times since the statute?s enactment, and has often been applied to supersede and dismiss claims asserted under state law, but *Gray* reminds us that not every dispute referring to ERISA-regulated benefit plans will support the preemption defense. The *Gray* court?s systematic analysis of the preemption defense provides useful instruction on how to apply it. *Gray* also offers a caution that the misclassification of workers as independent contractors can have broader consequences than just an impact on the calculation of

wages and payroll taxes.

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