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Employee Benefits

Supreme Court Decision Upholds ERISA "Church Plan" Exemption for Church-Affiliated Organizations

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The U.S. Supreme Court recently upheld the applicability of the Employee Retirement Income Security Act of 1974 (ERISA) "church plan" exemption for certain tax-exempt church-affiliated organizations (also referred to as "principal-purpose organizations"). The unanimous decision in *Advocate Health Care Network v. Stapleton*[1] has great significance for employee benefit plans maintained by church-affiliated organizations, such as church sponsored health care institutions, which may have taken the view that the substantive requirements of ERISA did not apply to their plans. However, following the *Stapleton* decision, certain open questions remain with respect to which entities are sufficiently "church-affiliated" and thus, exempt from ERISA. As discussed in more detail below, church-affiliated organizations should review the requirements of the "church plan" exemption and their plan administration procedures with their ERISA counsel to determine if they are within the exemption.

Statutory Background

Under ERISA, employee benefit plans are subject to a comprehensive regulatory scheme, designed to ensure plan solvency and protect plan participants. Among other requirements, ERISA includes reporting and disclosure mandates, participating and vesting requirements, and funding standards. In enacting the statute, however, Congress expressly exempted "church plans" from ERISA's requirements.

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ERISA defines the term "church plan" to mean "a plan established and maintained . . . for its employees . . . by a church or by a convention or association of churches."[2] In 1980, Congress amended ERISA to expand the definition of "church plan" by adding that "a plan established and maintained . . . by a church . . . includes a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan . . . for the employees of a church . . ., if such organization is controlled by or associated with a church."[3]

Supreme Court Decision

At issue before the Supreme Court in *Stapleton* was the question of whether "church plans" must be "established" by churches. Specifically, the respondents, current and former hospital employees, alleged that the hospital's pension plan did not fall within ERISA's "church plan" exemption (and thus must satisfy ERISA's requirements) because the pension plans were not *established by* the church. Petitioners, three church-affiliated nonprofits that run hospitals and offer their employees pension plans, argued that ERISA's "church plan" exemption does not require plans to be *established by* the church, as long as the plans are maintained by church-affiliated organizations. The District Courts that recently ruled on the original cases agreed with the employees' position, and held that the hospitals' plans were not "church plans" and needed to comply with ERISA. The Courts of Appeals for the Third, Seventh, and Ninth Circuits affirmed those decisions and the Supreme Court granted certiorari to review those findings.

The Supreme Court's decision, written by Justice Kagan, is based almost entirely on statutory interpretation, and the precise language used by Congress in the amendment to ERISA. Ultimately, the Court concluded the following: "Under the best reading of the statute, a plan maintained by a principal-purpose organization therefore qualifies as a 'church plan' regardless of who established it."[4] This determination provides protection to church-affiliated plan sponsors and shuts down the argument that such plans must comply with ERISA. Further, while the plans at issue in *Stapleton* were pension plans, the protections of the *Stapleton* decision should extend to other employee benefit plans, including 401(k) and 403(b) defined contribution plans, 457 deferred compensation plans, and health and welfare plans, which are maintained by church-affiliated organizations. However, as discussed below, the Court's decision begs the question of what is a "principal-purpose organization."

Open Questions

While *Stapleton* brings clarity to a question that had arisen in many cases across the country, other questions remain. The most significant

question, which the Court did not address, is what it means for an organization to be "controlled by or associated with a church."

- *What organizations are sufficiently affiliated with a church to qualify as exempt from ERISA?*

  The Court did not discuss the criteria or attributes that must be met in order for an organization to be deemed a church-affiliated organization that may maintain a plan under the "church plan" exemption. Plaintiffs may turn their focus and pursue claims that church-affiliated organizations are not sufficiently tied to churches to be eligible for the exemption.

- *Will Congress amend ERISA to narrow the "church plan" exemption?*

  In *Stapleton*, Justice Sotomayor delivered a concurrence in which she agrees with, but questions, the outcome of the decision. In particular, she points out that employees who work for organizations that "look and operate much like secular businesses" will suffer by not being afforded the protections of ERISA. She queries whether the outcome, which benefits organizations with thousands of employees and billions in revenue, is consistent with the intent of the "church plan" exemption as currently written. In response to such concerns, it is possible that Congress could act to expressly narrow the scope of the "church plan" exemption.

Considerations for Church-Affiliated Organizations

In light of the *Stapleton* decision and the significance of being exempt from ERISA, church-affiliated organizations are advised to review benefit plan administration and governance with their ERISA counsel to confirm the requirements of the church plan exemption are being satisfied.

- *Review the organization's affiliation with a church.* Along with religiously affiliated health care institutions (like the petitioners in *Stapleton*), charities, educational institutions, universities, and other entities with religious affiliations may seek to rely on the "church plan" exemption. Such organizations should analyze and document its connections with a church, including factors that demonstrate a degree of "control by" the church. Further, ERISA provides that an organization is associated with a church "if it shares common religious bonds and convictions with that church or convention or association of churches.[5]" Certain organizations, particularly those founded many years

ago, should consider whether these bonds have withstood the test of time.

- *Review plan documents and materials.* Church-affiliated organizations should review plan documents to be sure that ERISA is not invoked. Plans relying on the "church plan" exemption may want to avoid using customary ERISA language in its communicating materials and may be better served by expressly disclosing that the plan is a church plan, maintained by a church-affiliated organization.

- *Review plan administration and management.* Regardless of whether ERISA is applicable, it is advisable for church-affiliated organizations to adopt formal governance structures and administration procedures with respect to benefit plans. For example, plans should be administered by a committee that adheres to ERISA-like standards.

Conclusion

The Supreme Court's recent decision brings some clarity for church-affiliated organizations that have relied on, or seek to rely on, the "church plan" exemption. The decision is a wake-up call to all religiously affiliated organizations to examine their plans and programs and evaluate new risks and opportunities created by the decision. At the same time, these organizations need to appreciate that the terrain may shift once again down the road. In the future, it is likely that challenges will focus on the basis upon which a church-affiliated organization is controlled by or associated with a church. Plan administrators of church plans should review these issues and work with counsel to determine if they meet the requirements of a church-affiliated organization.

Notes

1. No. 16-74 (U.S. June 5, 2017).
2. § 1002(33)(A).
3. § 1002(33)(C)(i).
4. Advocate Health Care Network v. Stapleton, No. 16-74 (U.S. June 5, 2017).
5. § 1002(33)(C)(iv).