

eBenefits Alert: In Advocate Health Care Network Case, SCOTUS Rules in Favor of Church Plans

June 19, 2017

On Monday, June 5, 2017, the U.S. Supreme Court upheld what has been a long-standing position of the IRS and DOL regarding the requirements that must be met to have "church plan" status under ERISA and the Internal Revenue Code. The agencies' position had recently been challenged in several court cases culminating in three Circuit Court of Appeal cases (3rd, 7th and 9th Circuits) ruling against the agencies' interpretation of the law. These challenges were the reason the Supreme Court elected to weigh in on this matter.

At issue in the case is the question of whether a church-affiliated organization, which by statute is permitted to "maintain" a church plan, is also permitted to "establish" the plan, or whether church plan status is only available if the plan was initially established by a "church." The Courts of Appeal ruled that only a church may establish a church plan. The Supreme Court disagreed, upholding the IRS' and DOL's position that plans established by certain church-affiliated organizations, referred to as "principal purpose organizations," are "church plans." In so doing, the court clarified the law and offered some comfort to church plans regarding their status at least for the time being.

Church plans are not subject to ERISA and are subject to reduced requirements under the Internal Revenue Code. Church plans are not required to be funded and have significantly more lenient vesting and nondiscrimination requirements than do most non-church plans. Because of this, church plans are generally considered to afford fewer protections to participating employees. The challenges to the IRS' and DOL's position articulated in the three Court of Appeal decisions were, effectively, an attempt to narrow the population of employees subject to the less employee-friendly church plan rules.

The Supreme Court case (along with the Circuit Court decisions it overrules) is basically an exercise in statutory construction, in which the court carefully analyzes the meaning of a specific provision in the definition of "church plan" in ERISA and the Internal Revenue Code, and concludes that a logical reading of the statutory language compels the conclusion that Congress meant that a principal purpose organization may establish a church plan.

While the case focused almost solely on the interpretation of the statute, one cannot help but wonder if at least part of the motivation for the Supreme Court's decision was a concern about the tax and other

consequences to organizations that have been operating under the church plan rules if the court reached a contrary result. Would they lose church plan status retroactively?

And, while the case settled the question of whether a "principal purpose organization" can establish a church plan, it did not focus at all on what sort of control over (or association with) an organization a church must have in order for the organization to be considered a principal purpose organization. In its private letter rulings, the IRS has enumerated a number of factors to consider in making this determination. Whether the IRS' standards will be the subject of the next round of court challenges, or perhaps even legislation, remains to be seen.

Advocate Health Care was a unanimous Supreme Court decision, so this particular question regarding the application of the church plan definition has clearly been resolved. But Justice Sotomayor, in her concurring opinion, raised some thoughtful concerns about the wisdom of a policy that provides reduced employee benefit protections for employees of very large principal purpose organizations with significant assets, such as large church affiliated hospitals, while potentially providing some competitive financial advantages to those same organizations.