HR insider bulletin

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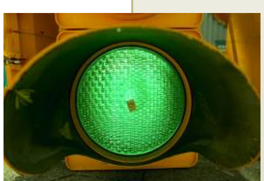
WINE SERGI INSURANCE

Key Issues Facing Business Owners

401(k) Hot Seat

Supreme Court Gives Workers Green Light to Sue Over Losses

THE SUPREME Court's recent decision in *LaRue v. DeWolff, Boberg & Associates, Inc., et. al.*, impacts employers across the country. According to Fisher & Phillips LLP, the Court has made it easier for *individual* workers to bring claims against their employers for losses to their 401(k) plans and other retirement plans subject to federal pension laws (ERISA).



The decision was significant because the Supreme Court reversed lower-court rulings that had held employers not liable for losses suffered by their workers, even if accounts had been mismanaged.

Now that the impediment to individual claims has been removed, employers need to heighten their understanding of their fiduciary obligations, notes Fisher & Phillips. The decision sends a clear message to plan fiduciaries of the need for ensuring absolute compliance with ERISA's dictates. Other than enrolling employees as they meet eligibility requirements, most employers have very little day-to-day interaction with the plan.

However, what employers may not understand is that despite their minimal involvement, they are fiduciaries of the plan, either because they are named as such in plan documents or by virtue of actions they have taken with respect to the plans, says Fisher & Phillips. They can be liable for the type of losses alleged by Mr. LaRue even if they were not *(Continued on back)*

Focal Point of Reform

Coalition Fights Chronic Ills to Lower Employers' Rising Healthcare Costs

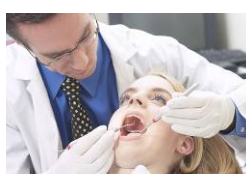
CHRONIC DISEASE IS the number one cause of death and disability in the United States, and it now accounts for approximately 75 percent of the nation's healthcare spending, according to Dr. Ken Thorpe, professor, Emory University and Chair of the Department of Health Policy & Management. To Thorpe, focusing on the growing prevalence of chronic diseases and their cost could be the starting point in building bipartisan support for healthcare reform.

For example, according to estimates from the Centers for Disease Control and Prevention, 80 percent of heart disease and stroke, 80 percent of type 2 diabetes, and 40 percent of cancers could be prevented if Americans stopped smoking, started eathing healthy, and got into shape. Thorpe says that 15 to 30 percent of the increase in healthcare spending in the past two decades is attributable to the increase in obesity.

Thorpe used his experience in helping Vermont design a sweeping set of reforms in 2006 to found the *Partnership to Fight Chronic Disease*, a national coalition of 110 organizations, including such dissimilar groups as the Service Employees International Union and the U.S. Chamber of Commerce. One of the group's goals *(Continued on back)*

Drilling Down Costs

Value-Based Plans Move into Dentistry



EMPLOYERS ARE ALREADY aware on the medical side about the value of evidence-based medicine in terms of covering benefits. "They don't want to pay for stuff that's unnecessary, and they might start to apply that to dentistry," says Gary Colangelo, dental director, CareFirst BlueCross Shield.

"We have a lot of catching up to do," notes Colangelo. "We may not be able to do it at the same level as on the medical side, but at least we can begin to take the evidence at hand and apply it to dentistry." Evidence-based dentistry is about ensuring that the right patient receives the appropriate procedure for the right condition at the right time. For example, Colangelo questions whether a healthy adult who does not have a history of tooth decay should see a dentist twice a year. Maybe seeing a dentist annually or every two years is enough for such a person.

Yet other dental benefit analysts say that the use of evidence-based practices in dentistry will lead to enhanced benefit *(Continued on back)*

401(k) Hot Seat

(Continued from front)

directly responsible for the act giving rise to liability.

The case further emphasizes the need for plan administrators to carefully administer participant investment elections, according to Ice Miller LLP. They note that plan fiduciaries can further reduce their potential liability by taking the following actions:

- Administer the plan in compliance with its terms.
- Hire an independent investment advisor to assist the plan fiduciaries with selecting and monitoring the investment funds made available under the plan.
- Adopt an investment policy statement to document the investment decisions and the criteria and benchmarks by which the investments will be monitored over time.
- Carefully consider the risks and benefits of adding or retaining employer stock as an investment option under the plan.
- Obtain appropriate fiduciary insurance and/or indemnification provisions to protect individual fiduciaries.
- Consider hiring legal counsel to perform a mock fiduciary compliance audit.

"Plan fiduciaries and administrators should take their roles seriously, seek expert advise in the selection and monitoring of investment funds available under the plan, and document the decisions made," says Craig C. Burke, partner, Ice Miller Employee Benefits Group. ■

Focal Point of Reform . . . . (Continued from front)

is to ensure that the rise in chronic diseases will be part of the debate on healthcare reform in the coming presidential election. Chronic diseases include a wide range of conditions, from mental illness, cancer, and HIV/AIDS to high blood pressure, diabetes, and asthma. Many of them stem from lifestyle choices, Thorpe notes, primarily smoking, poor diets, and lack of exercise.

A recent study published in *Health Affairs* found that an estimated 40 percent of U.S. deaths are caused by ailments linked to modifiable behaviors, such as bad diet, physical inactivity, smoking, alcohol abuse, and poor coping mechanisms for stress. Thus, one component of fighting chronic disease would require changing the focus and incentives in the healthcare system, Thorpe says. "The whole idea is doing preventive maintenance." ■

Drilling Down Costs . . . (Continued from front)

coverage, such as research linking periodontal diseases to other health conditions such as diabetes and low birth weight.

In the meantime, a recent Segal survey of dental coverage reveals ways employers can reduce the costs of and add value to their dental plans: (1) Review covered procedures, exclusions, and limitations to ensure up-to-date procedures are covered based on acceptable dental procedures and practices, so that both appropriate care is provided and costs are controlled; (2) Offer a Dental Maintenance Organization (DMO) or Dental Provider Organization (DPO) to provide network services at discounted fees; (3) Lease an insurance company's dental network —some insurance companies will do this for plan sponsors who want to self-administer their plans, and network access fees have become very competitive; (4) Convert to a self-insured plan to improve cash flow when claim experience is low, reduce administration fees, and avoid state mandates and insurance premium taxes; and (5) Update fixed maximum dollar coverage amounts for scheduled plans. Outdated amounts provide low levels of dental coverage or allow dentists to charge inappropriate amounts for procedures that are no longer relevant. ■

. . . . Bulletin Briefs . . . .

♦ *U.S. Chamber of Commerce Releases Annual Study of Benefits*

The cost of benefits averaged 42.7 percent of payroll, according to the Chamber of Commerce's *Employee Benefits Study 2007*. As a percentage of payroll, payments for medically related benefits accounted for 12.1% of employer benefit costs; retirement benefits, 10.4%; vacation, holidays, and other time not worked, 9.8%; and legally required payments, 9.5%. Companies with fewer than 100 employees paid an average of 33.5% of payroll in benefits; medium-size companies (500-999 employees), 40.5%; and the largest companies (5,000 or more employees), 43.2%. ■

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