

News & Types: Employment, Labor & Benefits Update

# Employment, Labor & Benefits Update - June 2017

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By: Frank J. Del Barto

Practices: Employment, Labor & Benefits

## **MASUDA FUNAI'S ATTORNEYS SPEAK ON EMPLOYMENT AND BENEFITS MATTERS**

Advertised in Crain's Chicago Business, Alan M. Kaplan and Frank J. Del Barto presented a program on Onboarding & Terminating Employees on May 3, 2017, to Illinois workNet in Arlington Heights, Illinois.

On May 1, 2017, Frank presented an "Overview of USERRA" and its application to employee benefit plans at The John Marshall Law School's 14th Annual Employee Benefits Symposium. On May 16, 2017, Frank presented a program on 401(k) plan fee and expense litigation to over 150 retirement plan auditors at the Illinois CPA Society's Employee Benefits Conference.

## **CHEVRON 401(K) SUIT DISMISSED WITH PREJUDICE**

By Frank Del Barto

On May 31, 2017, the U.S. District Court for the Northern District of California granted Chevron Corporation's motion to dismiss a first amended complaint which alleged various breaches of fiduciary duty related to Chevron's 401(k) Plan (the "Plan"). As of December 31, 2014, the Plan had more than \$19 billion in assets and over 40,000 participants. Noting that the plaintiffs failed to correct the deficiencies noted by the Court in its prior order, this dismissal was with prejudice. *Charles White, et al., v. Chevron Corporation, et al.*, Case No. 16-cv-0793-PJH.

Plaintiffs, who are participants in the Plan, filed a class action against defendants Chevron Corporation, the Plan's investment committee, and 20 DOEs (who were alleged to be "current and former members of the investment committee"). In granting the defendant's motion to dismiss, the Court reviewed plaintiff's allegations that defendants (1) breached their duties of loyalty and prudence by selecting a money market fund versus a stable value fund in violation of the plan's investment policy statement, (2) caused the plan to pay unreasonable investment management fees, (3) retained a particular fund in the plan that drove investment revenue to Vanguard, (4) caused the plan to pay excessive recordkeeper fees, and (5) failed to monitor fiduciaries.

In short, like most 401(k) suits, the plaintiffs alleged that because defendants selected funds with lower returns and higher administrative and management fees, the value of their individual accounts decreased. If true, how does a plan fiduciary know if its fees and expenses are reasonable? First, plan sponsors must understand the various fee and expense components of their particular plan. For this initial step, we recommend that the

plan sponsor's consider utilizing the 401(k) Plan Fee Disclosure Tool provided by the U.S. Department of Labor.

The DOL has provided the tool in order to help plan fiduciaries understand and determine the "total cost of the plan" by identifying the various investment product, administrative, start-up and termination fees. Once a plan administrator has determined the source of all plan fees and expenses, we recommend benchmarking those fees and expenses via the retention of an investment advisor and / or engaging in a competitive bidding process. By benchmarking plan fees and expenses, plan sponsors will have a better understanding of the reasonableness of their plan's fees and expenses and help ensure that they continue to meet their fiduciary duty to defray the reasonable costs of the plan.

Naturally, the benchmarking process may lead to a change in 401(k) providers, or it may prompt the existing provider to provide alternative funds, share classes, and /or simply improve its pricing to retain the business. Because a 401(k) account balance is likely the plan participant's greatest asset, it is critically important to periodically review and benchmark plan fees and expenses.

#### **MASUDA FUNAI PRESENTS COMPANY-SPECIFIC WEBINARS AND TRAINING PROGRAMS**

With managers and employees located in different facilities around the country and overseas, Masuda Funai's employment lawyers now present webinars as part of the training programs its presents. Presented from one of the Firm's offices, one of the Firm's attorneys presented a webinar on the Family & Medical Leave Act to over 80 site managers and administrators who implement the FMLA on a daily basis and need to comply with the certification and recertification of leave as well as intermittent and fraudulent use of FMLA leave. Two other attorneys traveled to a client's facilities in Michigan, Ohio and Tennessee to present a series of seminars on anti-competitive business behaviors and price fixing under U.S. anti-trust laws, working with foreign officials and governments, and harassment prevention. Future in-house seminars are scheduled on the importance of a code of conduct and confidentially and non-compete agreements. If there is an employment topic that you are interested in learning more about and it would fit into a webinar format, please be sure to contact your Masuda Funai relationship attorney.

#### **THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS AWARDS EXCELLENCE IN PRO BONO SERVICE TO FRANK J. DEL BARTO AND DAVID J. STEIN**

Frank J. Del Barto and David J. Stein received awards for excellence in pro bono service at the Eighteenth Annual U.S. District Court for the Northern District of Illinois and the Chicago Chapter Federal Bar Association Awards Ceremony held on May 24, 2017.

Judge Elaine E. Bucklo nominated Frank and David for the award to recognize their work on behalf of Loretta Morse in Morse v. Illinois Department of Corrections, Case No. 12 C 10263. In presenting the award to Frank and David, Judge Bucklo remarked that they provided outstanding representation to their client who filed an age discrimination case against her former employer, the Illinois Department of Corrections. After years of discovery, successfully opposing summary judgment, and conducting a three day trial, the case settled on very favorable terms.

In his remarks, Frank said that "having invested over three and one-half years helping Ms. Morse pursue her claims, the favorable settlement terms which will enable Ms. Morse to move on with her life reinforces my belief that all lawyers should consider representing those individuals who may not have a voice in our legal system."

David added, "it was a pleasure to represent Ms. Morse and advocate on her behalf to see that she obtained just compensation for the discriminatory treatment she suffered at the hands of her former employer."

For more information about this or any other employment law topic, please contact Frank Del Barto, Chair of the Employment, Labor & Benefits Group, at 847.734.8811 or via email at [fdelbarto@masudafunai.com](mailto:fdelbarto@masudafunai.com).