

EMPLOYER HELD LIABLE FOR SERVICE PROVIDER'S ERROR

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Usually court cases involving proper remedies under ERISA are largely of interest only to ERISA attorneys and litigators. However, a recent Second Circuit Court of Appeals case is one that should be of interest to employers who sponsor plans. The case involves a retiree group term life insurance plan. The plaintiff's mother in this case was employed for a number of years and her annual income was \$16,800. Under the terms of the plan, the mother was eligible for life insurance coverage equal to one times annual pay. However, the third party administrator incorrectly coded the mother's income as being \$16,800 per week. The administrator sent various communications to the plaintiff's mother informing her of the level of coverage. The plaintiff's mother contacted the administrator and indicated that she was surprised by the level of coverage, but she was told the level was correct. The administrator's record showed that an employee asked a supervisor to look at the level of benefit and the supervisor told the subordinate employee that the level of coverage was correct. The daughter, relying on this level of life insurance coverage for her mother, quit her job and allowed her mother to live with her rent free, covered her mother's living expense, paid off the mother's debt, and the daughter took an unpaid leave of absence.

As you may suppose, the mother died and the daughter expected to receive \$679,000 as a death benefit. At the time the claim was filed, the administrator recognized the error in their records and informed the daughter/plaintiff that the benefit was only \$16,800. A lawsuit occurred.

The Second Circuit, overturning the district court, made two findings. First, the employer's appointment of the third party administrator was a fiduciary act and therefore, errors made by the third party administrator are imputed to the employer/fiduciary. Therefore, the statements informing mother of the higher level of coverage are to be upheld as a statement made by a fiduciary to a plan participant. Second, the court found that the employer is liable because the daughter detrimentally relied on the statements made by the third party administrator and therefore, it was an appropriate remedy under ERISA for this fiduciary breach to provide for monetary damages.

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As this case highlights, employers should be aware that they may be held liable for mistakes made by third party administrators that they hire. Employers may want to review service contracts with their third party administrators regarding the third party administrator's liability. Employers may also want to require third party administrators to inform the employer when any questions are raised about the proper calculation of benefits so that the employer may review the situation before a tragic situation happens and a large lawsuit occurs. *Sullivan-Mestecky v. Verizon Communications Inc.*, (2d Cir. 2020).