ERISA Lawsuit Alleging Worker Misclassification Is A Reminder to Employers to Monitor Their Employee Classifications

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A plaintiff recently filed suit against Yum! Brands, Inc. ("***Yum***"), Taco Bell Corp. ("***Taco Bell,***" together with Yum referred to herein as, the "***Employers***"), and various other defendants under ERISA over the alleged misclassification of his employment status. The complaint states that common law employees were eligible to participate in certain retirement plans maintained by the Employers (collectively, the "***Plans***") pursuant to the Plans' governing documents. The plaintiff alleges he met the common law test for employee status but was classified as an independent contractor, instead of an employee, during his 25 years of employment. Specifically, the plaintiff alleges that during the relevant employment periods, the Employers controlled the work he performed and the manner and means by which he performed his work, such as by directing the specific order and sequence of his work and requiring him to attend employee-only events and meetings. The plaintiff further alleges that other similarly situated employees received salaries, bonuses, and other employee benefits such as pensions and health insurance while he was only compensated on a monthly basis as an independent contractor. Accordingly, the plaintiff filed suit claiming he was improperly excluded from participating in the Plans and deprived of his rights under ERISA.

This case serves as a reminder to employers to carefully monitor the classification of their workers and to periodically make adjustments as needed. Misclassification and improper exclusion of workers can not only cause employee relations issues but also result in substantial liability under ERISA and various other federal and state laws. Also, to avoid having FLSA violations result in operational failures in ERISA retirement plans, employers should consider drafting ERISA retirement plans to expressly exclude from eligibility all independent contractors and other non-employees who are retroactively classified as employees.

The complaint is available here.

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