

Fifth Circuit Decision is a Reminder to Employers on Structuring Severance Plans

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Last week's decision by the U.S. Court of Appeals for the Fifth Circuit in *Atkins v. CB&I, LLC* is a reminder that employers may prefer to structure bonus and severance programs so as to be covered by ERISA and thus avoid being subject to unfavorable state laws. In *Atkins*, five employees brought suit in Louisiana state court claiming their employer's project incentive bonus plan which pays a single bonus payment to employees who are laid off or complete their roles in a specific project constituted an illegal wage forfeiture agreement under the Louisiana Wage Payment Act. Each of the employees had quit and consequently forfeited their bonuses under the plan's terms. The employer removed the suit to federal district court claiming the bonus plan was a severance plan subject to ERISA and thus ERISA, as controlling federal law, preempted the employees state law claims. The district court agreed.

The Fifth Circuit reversed the district court. Following the Supreme Court's decision in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987), the Fifth Circuit held that this bonus plan did not involve an administrative scheme and thus did not qualify as a plan subject to ERISA. The keys to this decision were (i) the simple payment calculation under the plan, (ii) the fact that the plan provided for a single payment rather than ongoing payments, and (iii) the lack of judgment required to determine eligibility to receive a payment. The Fifth Circuit remanded the case back to the district court to be returned to state court.

With limited exceptions, benefit plans covered by ERISA are not subject to state law requirements or claims because ERISA preempts state laws that relate to the plan. Accordingly, it can benefit employers to draft their severance and bonus programs in a manner such that the plan is covered by ERISA as opposed to the vagaries of different states laws.

Atkins v. CB&I, LLC, No. 20-30004 (5th Cir. Mar. 22, 2021) is available [here](#).