

It's All Part of the Plan – Consistency is Key to Treating Multiple Documents as One Plan

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Plan sponsors of severance plans that set forth the terms of one severance plan in multiple plan documents should consider combining those documents into one document or carefully reviewing each plan document to ensure there are no inconsistencies (including relating to eligibility, effective dates, and benefits) and that each document not only references the other documents but is incorporated into the other documents by reference. Otherwise, the plan sponsor may risk one of the documents being deemed a pay practice exempt from ERISA, subjecting the plan sponsor to state law claims in any state where employees are covered. This risk was recently highlighted in *Caggiano v. Teva Pharm. USA, Inc.*, where former employees (**Plaintiffs**) of Teva Pharmaceuticals, Inc. (**Defendant**) brought two state law causes of action against Defendant based on the denial of separation pay benefits under Defendant's severance plan, which was comprised of a Separation Benefits Plan (**SBP**), a Supplemental Unemployment Benefits Plan (**SUB Plan**), and a Transition Plan. Defendant unsuccessfully argued that the SBP, SUB Plan, and Transition Plan, while in three separate documents, were one severance plan governed by ERISA, and, therefore, Plaintiffs' state law claims should be preempted. The court rejected this argument, finding that each of the three plan documents were inconsistent with the others, containing: (i) inconsistent descriptions of procedures for exercising participant rights and adjudicating claims and appeals; (ii) different titles, effective dates, and purposes; (iii) inconsistencies as to eligibility and ineligibility requirements; and (iv) different numbers of maximum and minimum weeks of severance pay eligible employees were entitled to receive. According to the court, Defendant's argument would have been more convincing had the SBP incorporated the SUB Plan and Transition Plan and had the Transition Plan not contained language stating that it was a separate and distinct arrangement. The court's opinion is available [here](#).