

May I or Must I? Employers Reminded to Carefully Consider ERISA Plan Document Requests

March 19, 2024

PRACTICES ERISA and Other Benefits Litigation, Employee Benefits and Executive Compensation

Employers, in their capacity as plan administrators of their employee benefit plans, often receive requests from participants or their representatives for plan documents. ERISA requires a plan administrator to furnish copies of the summary plan description, Form 5500, bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated, to a participant within 30 days after the participant's written request.

A recent U.S. district court case, in which a participant claimed that ERISA required Netflix, as plan administrator, to furnish the participant with copies of the administrative services agreements with service providers to its group health plan, serves as a reminder to employers that not all requested documents relating to an ERISA plan must be disclosed. In the Netflix case, the court ruled that the administrative services agreements related "only to the manner in which the plan is operated," as they govern the relationships between Netflix and its service providers, and not the relationship with plan participants, and therefore did not need to be disclosed.

Plan sponsors should also use care before providing documents (even in diligence requests for corporate transactions and during IRS or DOL audits), as an administrative services agreement is often considered confidential information under its terms, and disclosure to a non-party requires the service provider's consent. While administrative services agreements sometimes contain provisions that govern benefits under the plan and, at least to that extent, may need to be disclosed under ERISA, prior to disclosure, the plan sponsor may need to alert the service provider that the agreement is being provided to the participant or other third party.

The opinion in *Zavislak v. Netflix, Inc.* is available [here](#).