

Negotiation of a Premium Discount May Constitute an Employer Contribution

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A recent case decided by a federal district court in California highlights that employer action other than a direct payment of premiums may constitute an “employer contribution” for purposes of determining whether a group insurance program is exempt from ERISA. Under the so-called “Voluntary Plan Exemption”, generally such a program will be exempt from ERISA if (i) there are no employer contributions toward coverage, (ii) participation in the program is completely voluntary, (iii) the employer does not endorse the program, and (iv) the employer receives no consideration for the program. In *Bommarito v. Northwestern Mutual Life Ins. Co.*, the plaintiff, who was the sole owner of her company, and nine of her employees applied for individual policies of disability insurance to be issued by Northwestern Mutual Life Insurance Company (“**Northwestern**”). In the submission of her application to Northwestern, the plaintiff included the nine employee applications and a request for a “multi-life” plan, which would provide for a multi-life discount on the cost of each policy (collectively, the “**Policies**”). When Northwestern later cancelled the plaintiff’s Policy, she brought state-law claims against Northwestern. Northwestern contended that her claims were preempted by ERISA because the Policies constituted an “employee welfare benefit plan” under ERISA. The court agreed that the Policies constituted an ERISA plan. The plaintiff then asserted that the Policies were exempt from ERISA based on the Voluntary Plan Exemption. With respect to first prong of the exemption, the plaintiff argued that she never paid any premiums for her employees’ Policies, thus she never “contributed” to them. In evaluating the application of the Voluntary Plan Exemption, the court stated that when an employee receives a benefit that she would not have received absent the action taken by her employer, the employer’s action should be considered a “contribution”. The court then held that, because the plaintiff facilitated a discount on the cost of her employees’ Policies, she contributed to the Policies, regardless of who actually paid the premiums directly; therefore, the Voluntary Plan Exemption did not apply. Please note that *Bommarito* is controlling only in the jurisdiction of the federal district court of California that issued the opinion. However, an employer that wants to rely on the Voluntary Plan Exemption should take note that certain beneficial actions by an employer which impact the cost of employees’ coverage, such as the negotiation of a group premium discount, may constitute an employer contribution that negates the Voluntary Plan Exemption. *Bommarito v. Northwestern Mutual Life Ins.*, No. 2:15-cv-1187 (E.D. Cal. July 23, 2018).