

## Seventh Circuit Affirms that Discretionary Severance Benefits are Permissible under ERISA

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A recent case in the U.S. Court of Appeals for the Seventh Circuit illustrates that employers have flexibility when designing and drafting their severance programs to include a discretionary component. In *Carlson v. Northrop Grumman Severance Plan*, the Seventh Circuit found that an employer's discretionary eligibility criteria for severance benefits were permissible under ERISA. The employer's severance plan (the "**Plan**") provided severance benefits to laid-off employees who were regularly scheduled to work at least 20 hours per week if the employee "received a cover memo, signed by a Vice President of Human Resources . . . with this document addressed [to the employee] individually by name" (an "**HR Memo**"). The Human Resources department exercised discretion in issuing HR Memos to laid-off employees who met all other Plan criteria for severance benefits.

Two former employees who did not receive an HR Memo upon termination brought suit against their former employer in the U.S. District Court for the Northern District of Illinois, claiming that ERISA entitled them to severance benefits, notwithstanding the Plan's discretionary criteria. The district court granted summary judgment in the employer's favor, finding that "ERISA does not prevent a severance plan . . . from possessing and exercising discretion to determine recipients.

On appeal, the Seventh Circuit affirmed this finding, stating that "the Plan makes the receipt of severance benefits contingent on receipt of a HR Memo, which plaintiffs and the other class members did not get." The employer applied the discretionary criteria as written in the Plan, which is permissible under ERISA.

The Seventh Circuit's opinion is available [here](#).