

**RETIREMENT PLAN STATUS AFFECTING OPTIONS:
NO ERISA CLAIM**

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"[T]he Second Circuit rejected a former employee's argument that it was an ERISA breach of fiduciary duty for a stock plan administrator to assure the former employee that she could exercise her options following retirement under an ERISA-covered retirement plan."

Stock option plans are typically not subject to ERISA. So, when an option plan participant is unhappy about this, that, or the other, the participant generally can't resort to relief under ERISA. In a recent case, though, an option plan participant attempted to employ ERISA by noting that the exercisability of options post-employment turned, in part, on the participant's eligibility for benefits under an ERISA-covered retirement plan.

The participant's argument would strike many of us as a bit of a reach. That is, most of us would probably not think that the administration of a stock option plan should become subject to ERISA standards simply by pegging certain option rights to one's eligibility to retire under a company's qualified defined benefit pension program.

Fortunately, the Second Circuit Court of Appeals agreed. Specifically, the Second Circuit rejected a former employee's argument that it was an ERISA breach of fiduciary duty for a stock plan administrator to assure the former employee that she could exercise her options following retirement under an ERISA-covered retirement plan. *Bell v. Pfizer, Inc.*, 2010 U.S. App. LEXIS 18111 (2d Cir. 2010).

The company's stock option plan provided that options would, with one exception, terminate when an individual ceased to be an employee for any reason, including retirement. The exception was where the optionee retired under the regular retirement provisions of the company's retirement plan, which was presumably a qualified plan. These individuals were entitled to exercise their options for the remainder of the 10 year life of their option grants, except for options that had been granted within one year of retirement.

The plaintiff was not eligible for this extended exercise period. That is because she was not eligible for benefits under the regular retirement provisions of the qualified plan. She was, though, eligible for a special retirement benefit under the qualified plan provided to certain grandfathered individuals who had completed at least five years of service before 1994 and met certain other requirements.

The plaintiff never had any confusion about her eligibility for benefits under the qualified plan. But she argued that through an illustration of her stock options she was mistakenly led to believe she would be eligible to exercise her options following termination, under the rule for those eligible for regular retirement benefits.

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The court seemed fairly skeptical of the plaintiff's claim that she was misled, but that turned out not to be critical. That is because the court held that the plaintiff could not extend ERISA fiduciary duties to unintentional misstatements about the consequences under non-ERISA plans of a retirement decision under a plan subject to ERISA. And that is precisely what the plaintiff had attempted to do. Her real complaint, after all, concerned her ostensible misunderstanding about her ability to exercise options under the stock option plan, a plan that was not subject to ERISA.

The court said even where stock option rights (or other non-ERISA benefits) turn on a person's status under a plan subject to ERISA, ERISA fiduciary duties do not extend to issues relating to those non-ERISA benefits. Otherwise, the court reasoned, ERISA plan fiduciaries would need to identify all programs collateral to an ERISA plan and attempt to monitor the administration of those non-ERISA plans, while in fact having no power over those programs.

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