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6th Circuit deepens split on standard for ERISA plaintiffs

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(Reuters) - A U.S. appeals court on Tuesday ruled that plaintiffs who allege violations of the federal law governing employee benefit plans are not required to exhaust administrative options before going to court, deepening a circuit split.

A unanimous three-judge panel of the 6th U.S. Circuit Court of Appeals revived a 2015 proposed class action by retired employees of Cumberland University in Tennessee who say the school violated the Employee Retirement Income Security Act of 1974 by eliminating a retirement contribution matching program.

In doing so, the court held for the first time that plaintiffs who allege statutory violations of ERISA are not required to go through administrative proceedings before filing lawsuits.

Under ERISA, plan participants must exhaust administrative remedies when claiming that employers violated the terms of a benefit plan. But the law is unclear on whether the same requirement applies when workers say employers violated ERISA itself.

The plaintiffs in Tuesday's case say Cumberland violated ERISA in 2014 when it replaced a 5 percent retirement contribution match with a discretionary match, and then elected to provide no matching funds for employee contributions made from 2013 to 2015.

They claim the school violated the "anti-cutback provision" of ERISA, which prohibits employers from making any changes to retirement plans that decrease workers' accrued benefits.

U.S. District Judge Waverly Crenshaw in Nashville in June 2016 dismissed the case, saying the plaintiffs had failed to first bring their claims to the plan administrator. Crenshaw said that because they were challenging the calculation of their retirement benefits, the plaintiffs were required to go through such proceedings.

But the Cincinnati-based 6th Circuit on Tuesday said the plaintiffs alleged not that their benefits were improperly calculated, but that the 2014 amendment adopted by Cumberland was unlawful. Those claims cannot be resolved in administrative proceedings, Circuit Judge Eric Clay wrote, which are used to interpret and enforce plan terms.

"If such exhaustion were required ... the administrator would need to determine whether the retroactive amendment was properly instituted in the first place," Clay wrote. "That is not the plan administrator's role."

The panel also included Circuit Judges Gilbert Merritt and Bernice Donald.

Karla Campbell of Branstetter Stranch & Jennings in Nashville, who represents the plaintiffs, said in an email that by removing procedural barriers, the ruling "will have a profound impact on the ability of working people to safeguard their hard-earned pension benefits."

A spokeswoman for Cumberland, which was represented by Lewis Thomason King Krieg & Waldrop, did not respond to a request for comment.

The court joined the 3rd, 4th, 5th, 9th, 10th and D.C. Circuits in ruling administrative exhaustion is not required in such cases. But the 7th and 11th Circuits have held otherwise.

In the 1996 case Lindemann v. Mobil Oil Corp, the 7th Circuit said plan participants must bring alleged statutory violations of ERISA to plan administrators first in order to minimize the number of frivolous lawsuits. The 11th Circuit came to a similar conclusion in the 1985 case Mason v. Continental Group Inc.

The plaintiffs in Tuesday's case were backed by the U.S. Department of Labor, which said in a September 2016 amicus brief that plan administrators do not have the legal expertise necessary to evaluate questions of law.

The case is Hitchcock v. Cumberland University, 6th U.S. Circuit Court of Appeals, No. 16-5942.

For the plaintiffs: Karla Campbell of Branstetter Stranch & Jennings

For Cumberland: Daniel Olivas of Lewis Thomason King Krieg & Waldrop

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