EMPLOYMENT SERVICES ALERT

5/19/15

Tibble v. Edison International – Must ERISA Fiduciaries Re-Consider Past Actions to Avoid an Extended Period of Limitations for Breach of Fiduciary Duty Claims?

By David Strosnider, Partner

On May 18, 2015, in *Tibble v. Edison International*, the U.S. Supreme Court unanimously vacated and remanded a Ninth Circuit decision that breach of fiduciary duty claims made by the participants and beneficiaries of the Edison 401(k) Savings Plan (the "Plan") were time-barred by the Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA, a breach of fiduciary duty claim is timely if filed no more than six (6) years after "the date of the last action which constituted a part of the breach or violation" or "in the case of an omission the latest date on which the fiduciary could have cured the breach or violation." In the most critical aspect of the ruling, the Court explained that plan fiduciaries not only have a duty to exercise prudence when selecting investments, but also have a *continuing duty* to monitor plan investments and remove imprudent ones. Thus, the Court held that the claim is timely if the alleged breach of the continuing duty of prudence occurred within the six (6) year period of limitations under ERISA.

In deciding the case, the Court recognized that a fiduciary's duty under ERISA is derived from trust law. The Court wrote, "… under trust law, a fiduciary normally has a continuing duty of some kind to monitor investments and remove imprudent ones. A plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones. In such a case, so long as the alleged breach of the continuing duty occurred within six years of the suit, the claim is timely."

The *Tibble* decision is critically important because it exposes ERISA fiduciaries to increased liability resulting from the failure to re-consider past actions. In addition, the failure to continually monitor investments and replace imprudent ones will allow plaintiffs to expand (and possibly evade entirely) the otherwise applicable six (6) year period of limitations under the theory of a "continuing violation" of ERISA fiduciary duties.

In 2007, the participants and beneficiaries of the Plan (the "Petitioners") sued Plan fiduciaries, Edison International, and others (the "Respondents") to recover damages for losses suffered by the Plan. Petitioners argued that Respondents acted imprudently by offering six (6) higher priced retail-class mutual funds as Plan investments when materially identical lower priced institutional-class mutual funds were available. Petitioners argued that these breaches occurred in 1999 and 2002.

The District Court held that the Petitioners' claim with regard to the 1999 funds was untimely because the funds were selected as Plan investments more than six (6) years before the complaint was filed. The District Court also noted that circumstances had not changed enough within the six (6) year period to place Respondents under an obligation to review the mutual funds in question and replace them with lower priced institutional-class funds.

The Ninth Circuit affirmed the District Court concluding that Petitioners had not established a change in circumstances that would trigger an obligation to conduct a full due diligence review of the 1999 funds within the six (6) year period. The Court unanimously vacated and remanded the Ninth Circuit decision for the reasons described above.

Please do not hesitate to contact any of the following Roetzel attorneys should you have any questions regarding this topic.

Doug Spiker
Practice Group Manager,
Employment Services
216.696.7125 | dspiker@ralaw.com

Avery Delott
312.582.1636 | adelott@ralaw.com

David Hochman
312.582.1686 | dhochman@ralaw.com

Paul Jackson
330.849.6657 | pjackson@ralaw.com

Doug Kennedy
614.723.2004 | dkennedy@ralaw.com

James Shaw
312.580.1258 | jshaw@ralaw.com

David Strosnider
312.582.1688 | dstrosnider@ralaw.com