

It's worth paying attention to payroll

It's safe to say that days ending in 'y' and starting with 'pay' are a favorite across the board when it comes to your employees. So it shouldn't be difficult for us to remember how important the payroll function of our companies is; however, we often do. Of course, we all like receiving our paychecks on a consistent, timely basis and, once in a while, remember to thank the payroll clerk for his or her efforts. But payroll processing can be a complex matter, one that requires diligent attention to detail and specific third-party mandates, specifically in the realm of health insurance.

A recent appellate court decision from the Tenth Circuit, *Hansen v. Harper Excavating, Inc.*, reminds employers of the hazards of enrollment mistakes. This appellate court decision centered around an employee who was advised when first hired that he would be eligible under his employer's health plan after a 90-day waiting period. Upon hire, the employee completed health insurance paperwork. Three months later, the employee discovered that health insurance premiums were not being deducted from his pay. The employer's benefits coordinator told the employee that his original paperwork had been lost and had him fill out a new set of enrollment forms, which she sent to the employer's health insurance provider. The employer began regularly deducting premium payments from the employee's paycheck henceforth.

However, after the employee quit his job a few months later, he learned that he never had coverage because the insurance policy actually specified a 60-day waiting period and required employ-



GUEST OPINION

ANNE WILDE

ees to apply for coverage between 60 and 90 days after starting employment, ultimately rendering the employee's enrollment untimely. In other words, the 60 to 90 day window had passed by the time the employer actually submitted enrollment materials for the employee resulting in the insurance carrier rejecting the enrollment materials submitted by the employer. Later hospitalized, the employee sued in federal court to recover the unpaid medical expenses.

The federal trial court held that it was a breach of the employer's ERISA fiduciary duty to provide inaccurate enrollment information and fail to inform the employee that his coverage never became effective. It then ordered the employer to pay over \$57,000 in medical expenses plus over \$102,000 in attorney's fees and costs. The employer did not appeal this trial court determination - paying over \$150,000 to an employee who worked for the excavation company for just six months.

After learning more about the employer's actions through the first lawsuit, the employee filed a separate state court action. In this case, the employee asserts claims such as fraudulent

nondisclosure, negligent misrepresentation, breach of the covenant of good faith and fair dealing and special damages—all based on an alleged worsening of the employee's medical conditions caused by lack of regular medical care. Among other conditions, the former employee had spinal cord damage and blindness in one eye. The parties are still litigating these state law claims.

Harper Excavating's experience is a cautionary tale about the hazards of simple enrollment mistakes. To help avoid these mistakes, employers sponsoring insured plans must:

Be vigilant about understanding their insurers' enrollment requirements

Provide clear communications to employees

Carefully track deadlines and paperwork

If, as an employer, you do not have the internal human resources expertise or bandwidth to perform this function with the necessary attention to detail and accuracy, you might wish to work with an experienced payroll service or professional employer organization.

This case demonstrates that simple mistakes in payroll processing and health plan enrollment can be quite costly for employers. These mistakes can be easily avoided with a few easy steps, helping to ensure that pay day remains a happy one for your company.

Anne B. Wilde is an employment and ERISA group health plan attorney. She is the Principal of The HR & Benefits Advisor, PLLC, which advises employers and plan sponsors. Anne can be reached at anne@TheHRandBenefitsAdvisor.com or www.TheHRandBenefitsAdvisor.com.

