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ERISA Litigation

***Lytle v. Lowe's Home Centers, Inc.:* A Case Study in ERISA and Employee Classification Issues**

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Lytle v. Lowe's Home Centers, Inc.,¹ provides an interesting window into the way that courts analyze ERISA claims based on unconventional theories. In particular, the decision highlights the fact that even at the motion to dismiss stage, courts analyzing ERISA claims closely parse the purported statutory basis for any claim, carefully analyze the nature of the relief sought, and require exhaustion of a plan's claims procedures prior to the filing of any lawsuit. It also demonstrates courts' reluctance to treat day-to-day employment practices as giving rise to fiduciary liability under ERISA.

Background

The plaintiff in *Lytle* asserted claims based on the theory that Lowe's had improperly classified employees as "exempt" in violation of the Fair Labor Standards Act (FLSA). Employee classification – or *misclassification* – has been a hot topic whenever speculation turns to the "next wave" of ERISA class actions for some time now. Plaintiffs' attorneys have worked to craft theories that combine compensation-based claims under employment laws like the FLSA with claims under ERISA's statutory provisions into a one-two class action punch: (1) the plaintiffs were misclassified as temporary or part-time workers or as independent contractors, and were therefore undercompensated and are entitled to damages under FLSA; and (2) the plaintiffs also have not received benefits to which they were entitled based on the compensation they should have received, and are therefore entitled to damages under ERISA. If successful, this approach has the potential to increase damages for FLSA violations and graft ERISA's fiduciary requirements onto daily employment decisions.

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The plaintiff, Lyzeth Lytle, alleged in her complaint that Lowe's:

[W]illfully and intentionally engaged in a nationwide pattern and practice of violating the provisions of the FLSA, by misclassifying Human Resources Managers as exempt under the FLSA overtime wage provision, thereby improperly failing and/or refusing to pay [Lytle] and the Plaintiff Class, comprised of all current and former similarly situated employees who were or have worked over forty (40) hours per week, overtime compensation pursuant to FLSA [29 U.S.C. §§ 206-207].²

In addition to her claims under the FLSA, Lytle asserted claims under ERISA based on her allegation that Lowe's matching contributions to her 401(k) plan account were directly based on her compensation. Because she was entitled to additional compensation under the FLSA, she argued, she was also entitled to additional benefits from the plan. She also asserted that the plan's records based on the compensation actually paid to her were inaccurate, and therefore violated ERISA's record-keeping requirements. In addition to her record-keeping claim, Lytle also asserted under ERISA § 502(a)(3) that Lowe's breached its fiduciary duties by "failing to credit Plan accounts based on all of the overtime compensation" that she and the other putative class members allegedly should have received, and sought to recover past and future benefits under ERISA § 502(a)(1)(B) based on the compensation she contends she should have received.³

Lowe's moved to dismiss Lytle's ERISA claims. It argued that there was no private right of action for the alleged record-keeping violation; that Lytle failed to state a claim under § 502(a)(3) because she could obtain adequate redress under § 502(a)(1)(B) and because she was seeking monetary, rather than equitable, relief; and that Lytle's § 502(a)(1)(B) claim failed because she had not exhausted the administrative remedies available to her under the plan's claims procedures prior to filing suit.⁴

The Court's Decision

Although all three of Lytle's ERISA claims sought substantially the same relief, the court considered each of the three ERISA claims in turn, placing each into its statutory context. The resulting analysis, taken as a whole, demonstrates the court's disinclination to allow what the court viewed as an employment claim under the FLSA to be transformed into an ERISA claim.

The court began with Lytle's argument that Lowe's had violated ERISA's record-keeping requirement by improperly tracking hours worked by Lytle and the class members. As a starting point, the court turned to the plan documents' formulation for determining benefits. Reviewing the plan's terms, the court concluded "that under the relevant

Plan, it is the ‘eligible compensation’ – salary, wages, overtime premium pay, bonuses, and commissions – actually *paid* to employees, rather than the number of hours worked, which is relevant to allocating contributions.” Thus, it concluded, records of hours worked were not plan records covered by ERISA, because they were not necessary to determine the benefits due to employees.⁵

The court also engaged in a close review of the extent to which ERISA’s procedural record-keeping requirements can be enforced, as Lytle sought, through ERISA § 502(a)(3). The court concluded that there is no private right of action specifically to enforce ERISA’s record-keeping requirement, and that Lytle’s attempt to characterize the claim as one for “catch-all” relief under ERISA § 502(a)(3) failed because she was seeking monetary, rather than equitable, relief. “Even though Lytle strategically attempts to characterize Count II as a section 502(a)(3) claim for equitable relief, this Court finds that she in fact seeks an Order from this Court directing Defendants to provide monetary relief.” The court concluded that Lytle’s claim was properly characterized as a claim for benefits under § 501(a)(1)(B), and that therefore, bringing the claim “under the guise of section 502(a)(3) is inappropriate” and “Lytle’s cause of action under section 502(a)(3) is precluded by Lytle’s claim for benefits under section 502(a)(1)(B).” The claim was therefore dismissed with prejudice.⁶

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Second, the court considered Lytle’s claim for breach of fiduciary duty under ERISA § 502(a)(3), that Lowe’s “breached [its] fiduciary duties by failing to credit compensation due for overtime performed by Lytle and the members of the prospective ERISA class as eligible compensation under the plan.” The court first focused on the nature of conduct that Lytle was complaining about to determine whether it was actually fiduciary in nature. Citing other decisions confronting similar claims, the court determined that while decisions regarding how to classify employees may implicate the benefits due under the ERISA plan, they were not in and of themselves fiduciary decisions, and accordingly, could not be the basis for a breach of fiduciary duty claim:⁷

Here, Lytle does not allege that Defendants failed to keep records as required by ERISA; instead, Lytle argues in essence that the records that were kept are incorrect due to the Defendants’ classification

decision. Again, that underlying decision is an employment decision, not an ERISA plan decision. Accordingly, Defendants were not acting in the capacity of an ERISA fiduciary when making this employment decision.⁸

Moreover, the court concluded that, as with the claim to enforce ERISA's record-keeping requirements, Lytle was actually seeking an award of monetary relief not available under § 502(a)(3). Accordingly, the breach of fiduciary duty claim was also dismissed with prejudice.⁹

Finally, the court considered Lytle's claim under ERISA § 502(a)(1)(B). Lowe's argued that Lytle's claim under that section was barred because she had failed to exhaust her administrative remedies. Lytle argued that she should not be required to exhaust those remedies because "there is no administrative procedure set up for her or the purported ERISA class members to participate in prior to bringing a lawsuit." Reviewing the governing plan documents, the court rejected this interpretation, pointing out that the plan's Claims Procedure section specifically provided that Lytle could make a claim for benefits under the plan. However, the court also held that only dismissal without prejudice was warranted on this claim, and expressly permitted Lytle to "re-assert [her § 501(a)(1)(B) claim] at a later date once she has exhausted all administrative remedies available to her."¹⁰

For employers, the court's firm rejection of Lytle's attempt to transform an alleged breach of the FLSA into a breach of fiduciary duties should provide some comfort.

In combination, the court's conclusions on Lytle's three ERISA claims suggest that the court views Lytle's entitlement to additional benefits under the Lowe's plan as a derivative issue properly submitted to the plan's administrator in the first instance. Notably, the court did not provide any direction to the administrator regarding the correct application of the plan's terms to Lytle's claims. Rather, it left the interpretation of the plan language to the administrator in the first instance.

Conclusion

For employers, the court's firm rejection of Lytle's attempt to transform an alleged breach of the FLSA into a breach of fiduciary duties should provide some comfort. Employers necessarily make a host of employment-related decisions on a daily basis that impact the benefits

their employees are entitled to under ERISA plans. If each of these decisions must be made from the perspective of an ERISA fiduciary, focused only on the best interest of plan participants, employers' ability to make business judgment-based decisions would be significantly restricted. As a result, the careful, restrained reading of ERISA's fiduciary requirements and available private causes of action and relief provides some much-needed breathing room.

Notes

1. Case No. 8:12-cv-1848, 2014 WL 1689279 (M.D. Fl. April 29, 2014).
2. *Id.* at *1.
3. *Id.* at *2.
4. *Id.*
5. *Id.* at *5-*6.
6. *Id.* at *6-*9.
7. *Id.* at *9-*12.
8. *Id.* at *11.
9. *Id.* at *11-*12.
10. *Id.* at *12-*13.