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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

Seventh Circuit Holds That ERISA Does Not Pre-empt Illinois Slayer Statute

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HIGHLIGHTS:

- In *Laborers' Pension Fund v. Miscevic*, the U.S. Court of Appeals for the Seventh Circuit held that the Illinois slayer statute is one state statute that is not pre-empted by ERISA. A slayer statute is a law that prevents an heir from receiving assets or other property from a decedent if that heir is responsible for the decedent's death.
- ERISA pre-empts most state laws. However, there are certain types of state laws that are not pre-empted.
- While this decision provides meaningful guidance on the applicability of slayer statutes to retirement benefits, it is currently only binding on jurisdictions residing in the Seventh Circuit (e.g., Illinois, Indiana and Wisconsin). It remains to be seen whether the holding will become binding on other jurisdictions as well.

The Employee Retirement Income Security Act of 1974, as amended (ERISA), pre-empts most state laws. However, there are certain types of state laws that are not pre-empted. Recently, the U.S. Court of Appeals for the Seventh Circuit in *Laborers' Pension Fund v. Miscevic,* 880 F.3d 927 (7th Cir. 2018), held that the Illinois slayer statute is one of those state statutes that is **not** pre-empted by ERISA. A slayer statute is a law that prevents an heir from receiving assets or other property from a decedent if that heir is responsible for the decedent's death.

In this case, a woman killed her husband. The husband was a participant in a union pension plan that provided survivor benefits to a surviving spouse or, if there were no surviving spouse, to a minor child. There was no dispute as to the facts. In a state criminal proceeding, the woman was found to be not guilty of killing her husband by reason of insanity. Her husband's pension fund, The Laborers' Pension Fund (the Fund), brought an interpleader action to determine the proper beneficiary of the husband's pension benefits because the couple had a minor child.

The woman claimed she was entitled to a surviving spouse pension. The child, through a guardian, claimed the woman was barred from recovering from the Fund by the Illinois slayer statute. The Illinois slayer statute (contained in the Illinois Probate Act of 1975) provides that murderers are treated as having predeceased their victims so they cannot receive benefits as a result of their crime. Both the woman and the child's guardian moved for a judgement on the pleadings. The district court ruled in favor the child. The district court determined that ERISA did **not** pre-empt the Illinois slayer statute, and that the statute barred even those found not guilty by reason of insanity from the recovering from a deceased spouse. The Seventh Circuit affirmed the ruling of the district court.

The Seventh Circuit noted that ERISA's pre-emption clause states that, if a plan is subject to ERISA, ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." The court indicated that ERISA will pre-empt a state law claim if the claim requires the court to interpret or apply the terms of an employee benefit plan affecting core plan administrative matters or interfering with nationally uniform plan administration.

However, the Seventh Circuit focused on the intent of Congress and noted that there are certain traditional areas of state regulation that are not pre-empted by ERISA. In these areas, many of the principles underlying the statutes are well established in the law, with the statutes often predating ERISA. The statutes are more or less uniform nationwide. When determining ERISA pre-emption in these areas, it is important to review Congressional intent, and a party seeking ERISA pre-emption must overcome a presumption that Congress did not intend for ERISA to supplant state law.

The Seventh Circuit held that Congress did not intend ERISA to pre-empt slayer statutes. It stated that "[s]layer laws are an aspect of family law, a traditional area of state regulation." Such statutes are well established and do not adversely affect the administration of the plan. The woman failed to demonstrate that Congress intended ERISA to supersede state slayer statutes and that she should receive pension benefits after killing her husband. After finding that ERISA did not pre-empt the state slayer statutes, the court then analyzed Illinois' slayer statute and concluded that the wife was subject to the statute and not entitled to benefits, even though she was found not guilty of her husband's murder.

While this decision provides meaningful guidance on the applicability of slayer statutes to retirement benefits, it is currently only binding on jurisdictions residing in the Seventh Circuit (e.g., Illinois, Indiana and Wisconsin). It remains to be seen whether the holding will become binding on other jurisdictions as well. Until cases in other jurisdictions are brought, a plan administrator should give consideration to filing an interpleader action when faced with circumstances where a slayer statute may apply in order to be certain of how to pay plan benefits.

If you have any questions regarding how ERISA can pre-empt your state's laws, please contact a member of Holland & Knight's Employee Benefits and Executive Compensation Group, including Partners Ari Alvarez, Gregory Brown, Bob Friedman, Claudia Hinsch or Victoria Zerjav.