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Benefit Plans of Church-Affiliated Organizations Remain Exempt from ERISA

Since the enactment of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Service (IRS) and the Department of Labor (DOL) have interpreted the so-called "church plan exemption" to permit religious-affiliated organizations such as hospitals, nursing homes, colleges, and charities to establish and maintain employee benefit plans exempt from ERISA requirements.

ERISA, the federal law governing employee benefit plans, imposes certain administrative requirements on employee benefit plans and, in conjunction with the Internal Revenue Code, requires compliance with minimum funding, vesting, and nondiscrimination rules applicable to qualified retirement plans. Nevertheless, ERISA exempts "church plans" from these requirements and defines a church plan as a plan "established and maintained . . . for its employees . . . by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code." A 1980 amendment to ERISA further states that a church plan "includes a plan maintained by an organization . . . controlled by or associated with a church or by a convention or association of churches." Despite 30 years of DOL and IRS administrative rulings allowing church-affiliated hospitals to treat their pension plans as ERISA-exempt church plans, in recent years, plaintiffs have successfully challenged the exemption of organizations that are not actual houses of worship.

In the consolidated "church plan" cases, *Advocate Health Care Network v. Stapleton*, *St. Peter's Healthcare System v. Kaplan*, and *Dignity Health v. Rollins*, three religiously-affiliated hospitals sought to reverse lower court rulings that their pension plans were not exempt church plans because the plans were not *established* by a church. At issue before the Supreme Court was whether ERISA's church plan exemption applied to plans maintained by a church-affiliated organization or whether a church must initially establish the plan for the exemption to apply.

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In an 8-0 decision written by Justice Kagan (in which Justice Sotomayor joined but wrote a concurring opinion and in which Justice Gorsuch took no part), the Supreme Court reversed the lower courts' findings and held that an ERISA church plan includes a plan maintained by a church-affiliated organization. The Court rejected the argument that the ERISA church plan exemption applies only if a plan is established by an actual church, confirming the three decades of interpretive guidance by the IRS and DOL exempting plans established and maintained by church-affiliated organizations. Those church-affiliated organizations maintaining a benefit plan remain exempt from ERISA's requirements as long as the organization is sufficiently affiliated with a church.

In her concurring opinion, Justice Sotomayor agreed with the Court's interpretation of the ERISA language but cautioned that Congress may not have envisioned it would apply to large organizations employing thousands of employees, operating for-profit subsidiaries, and competing in the secular market with companies that had to bear the cost of ERISA compliance. She urged that ERISA still be construed with a view toward effecting its "broad remedial purposes."

This is clearly a cautionary note that religious-affiliated employers should take to heart. The Court's decision merely affirms that employee benefit plans maintained by organizations "controlled by or associated with a church or a convention or association of churches" will remain exempt from most of ERISA's requirements. There exist today many organizations where such control or association is unclear. Notwithstanding the Court's decision, a gray-area organization may wish to reexamine its status and possibly consider compliance with ERISA if there is doubt as to whether such religious control or affiliation could be established if church plan status were challenged. Furthermore, even ERISA-exempt retirement plans of religious-affiliated organizations have to comply with certain nondiscrimination provisions under the Internal Revenue Code to preserve tax-qualified status. Yet, many church-affiliated organizations have failed to recognize this requirement such that the qualified status of their retirement plan is at risk.

While the Court's decision is welcome news to most religious-affiliated employers, it is also creates an opportunity for organizations sponsoring church plans to take a look at their status and their compliance with applicable legal requirements to ensure that their benefit plans are properly established and administered.

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