



Conference Forum—March 2022



Wespath
BENEFITS | INVESTMENTS

Legal and Washington Update

Agenda

Retirement Plan Fee Litigation Update—
Hughes v. Northwestern University

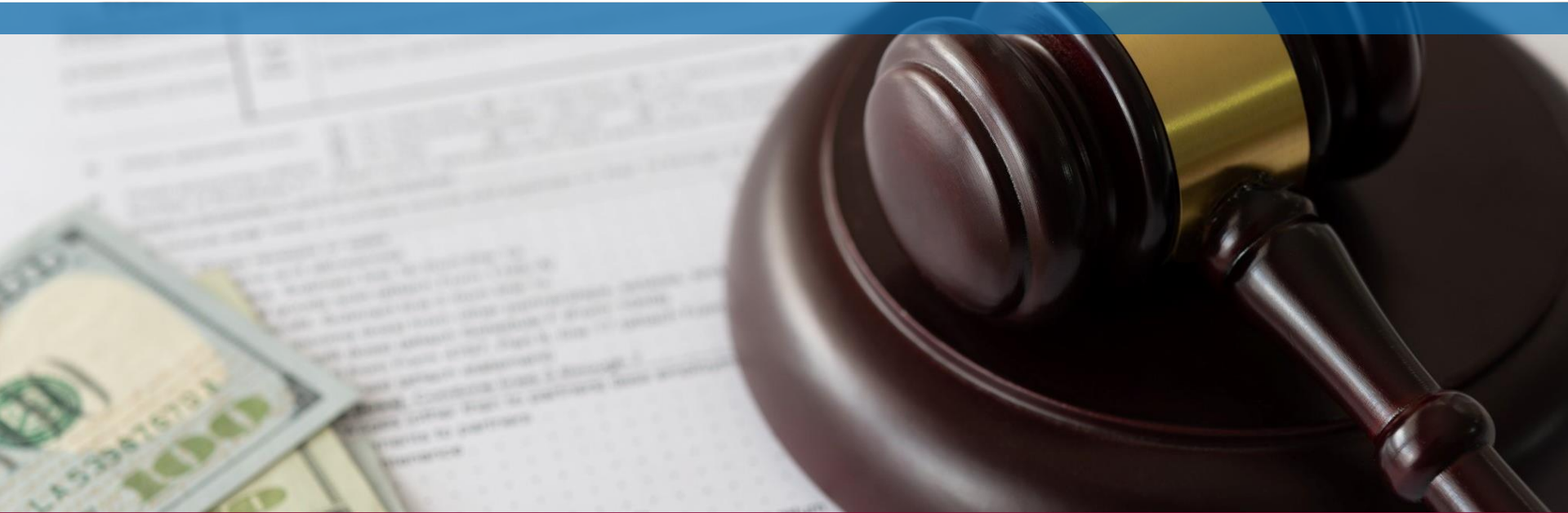
State Laws Impacting Group Health Plans

OSHA*—Vaccinations/Testing

UMC Developments

*OSHA: Occupational Safety and Health Administration





Retirement Plan Fee Litigation Update

Hughes v. Northwestern University

Hughes v. Northwestern University

- January 2022 Supreme Court case
- Alleged breach of fiduciary duties in a defined contribution (DC) plan
- ERISA* case
- 8-0 ruling to vacate and remand

* ERISA: Employee Retirement Income Security Act of 1974



Hughes v. Northwestern University

- Plaintiffs alleged violation of duty of prudence:
 - Failing to monitor and control recordkeeping fees, resulting in unreasonably high costs
 - Offering higher cost “retail” funds in plan’s menu of investment options
 - Offering options likely to confuse participants
- District Court granted motion to dismiss; 7th Circuit affirmed

Hughes v. Northwestern University

- Supreme Court held the 7th Circuit erred in relying on participants' choice over investments to excuse the allegedly imprudent decisions by fiduciaries
- Offering a diverse menu of options is not the only duty
 - **Fiduciaries must continue to monitor the menu and remove imprudent investments**

Hughes v. Northwestern University

- Case remanded to 7th Circuit
- **How does this case apply to the UMC?**
 - ERISA, but guidance based on common law of trusts
 - Reminder of duties that apply to Wespath fiduciaries



State Laws Impacting Group Health Plans

ERISA's 3-Pronged Preemption

- 1 ERISA preempts state laws that “relate to” employee benefit plans
- 2 Except that state laws regulating insurance, banking, or securities are not preempted
- 3 However, such state laws are prohibited from directly applying to ERISA plans

**Self-insured
ERISA plans are not
subject to state law;
fully-insured ERISA
plans are subject to
state law**

What Does this Mean for Church Plans?



- Church plans generally must consider each state law on a case-by-case basis
 - Some contain explicit exemptions for church plans
 - Some contain explicit exemptions for all self-insured plans or clearly only apply to fully-insured plans
 - Even if a state law applies to self-insured church plans, it may be possible to argue that it only applies to plans administered or headquartered in that state
- Church plans may be able to argue that applying certain state laws violates First Amendment (U.S. Constitution) and similar provisions of state constitutions

State Law Trend #1—Target PBMs

- **At least 20 states have enacted laws targeting third-party administrators or pharmacy benefit managers (PBMs) that administer the prescription drug component of health plans**
 - Intent: Improve price transparency, protect independent pharmacies, change price methodologies
 - Some explicitly cover self-insured plans (including ERISA plans) by arguing that the laws *apply* to PBMs, not health plans
- **Late 2020: U.S. Supreme Court held an Arkansas law requiring PBMs to use a specific reimbursement methodology for pharmacies in Arkansas is not preempted by ERISA**
 - This appears to have emboldened other states



These laws have the potential to reshape the pharmacy benefits industry

State Law Trend #2—Target Employers

- Some states have enacted laws that directly apply to employers—indirect impact to health plans
- Examples—new laws in 2021:
 - **Illinois:** Requires employers to provide specific notice regarding health plan benefits to all employees in Illinois
 - **Washington:** Requires employers to submit quarterly report of covered lives and pay fee based on the number of covered lives

Generally apply regardless of health plan type and size

- Example: Fully- or self-insured; ERISA or non-ERISA



State Law Trend #3—Public Option Bills

- At least 9 state legislatures are considering bills that would create a public option in their state
- Range from Medicaid buy-in program (e.g., West Virginia) to universal single-payor system (e.g., California)
- Generally provide that they do not create, prohibit, or relate to any employer-provided health plan
 - If passed, though, the new laws would certainly impact such plans



Update: OSHA Vaccination/Testing Mandate

OSHA Vaccine/Testing Mandate

- **Late 2021:** OSHA issued Emergency Temporary Standard (ETS) requiring COVID-19 vaccination (or weekly testing) for employees of most private-sector employers (at least 100 employees)
- **January 13, 2022:** U.S. Supreme Court ruling blocked OSHA's ETS from going into effect
 - Court found that such a broad mandate exceeds OSHA's authority from Congress
- The Court acknowledged that OSHA has authority to regulate occupational risks related to COVID-19
 - OSHA is continuing to consider further action related to COVID-19 vaccinations



OSHA Vaccine/Testing Mandate

Other Federal Mandates

- U.S. Supreme Court has upheld the Department of Health and Human Services' vaccine mandate for healthcare providers receiving Medicare and Medicaid funding
- Preliminary injunctions have been issued by 6 federal district courts stopping enforcement of President Biden's Executive Order that mandates vaccines for employees of most federal contractors; cases are pending





UMC Developments

General Conference Postponement

- **Postponed until 2024 by Commission on GC**
 - U.S. visa backlog—concerns over impact on overseas delegate attendance
 - Commission meets again March 28
- **“Postponed” vs. “Canceled”**
 - Original petitions, delegates still apply in 2024?
 - Wespath filed updated legislative petitions in January with Commission on GC
- **Impact on Church Disaffiliations?**



Key Wespath Petitions for GC—On Hold

Close CRSP* and replace with Compass



Close **CRSP**—
cease new liabilities



Establish **Compass**—
account balance only

Changes to Wespath governance and Board membership

Framework for interim plan changes

* **CRSP**: Clergy Retirement Security Program

Disaffiliations—Judicial Council

Recent Decisions—February 2022

- **Annual conference has authority to approve disaffiliations**
 - Clergy can vote on disaffiliation, including making a motion to approve
 - Limited to up or down vote (cannot amend disaffiliation agreement)
 - Property cannot be transferred before conference ratification vote
- **Annual conference can add terms/requirements beyond ¶2553 “minimum standards”**
 - Repayment of prior grants
 - Extended discernment period
- **Nondisclosure agreements are OK as part of negotiated settlement**

**6 cases
about disaffiliation
under ¶2553**

Seeking clarifications about **process for** and **authority of** annual conferences, bishops, etc., regarding disaffiliation of local churches

Disaffiliations—Council of Bishops

Seeks Ruling from Judicial Council—Annual Conference Disaffiliation?

- **Can an annual conference separate from UMC** (based on current *Discipline* provisions)?
- **Can ¶572 be viewed as minimum standard for a U.S. annual conference to separate?**
 - ¶572: process for non-U.S. conferences to separate from UMC
- **Must GC first act to establish procedure/requirements for U.S. annual conference to separate** (JC Decision 1366)—before annual conference can vote to separate?
- **In absence of procedures, what is annual conference authority (if any) to act on separation vote?**
- **If annual conference may separate, what are the requirements under the *Discipline*?**
 - Maintenance of retirement benefits and compliance with civil law and Wespath requirements
- **If conference separates, must dissenters have option to remain within UMC?**
 - Join another annual conference?

Looking Ahead...

**Wespath's focus: continuity of benefits
for those who serve**

- Bridge-building, non-anxious presence in the midst of change
- In dialogue with all major groups *across full spectrum of beliefs*
- More to come tomorrow...





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