

# Benefits and Employer Liability

## Administering and Advising Benefit Plans

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# Benefits and Employer Liability

What obligations do employers have re: benefit plans?

1. Administrating benefit plans

Duty: to *diligently administrate* benefits

2. Advising re: benefit plans

Duty: to *accurately describe* benefit coverage

# Administering Benefit Plans

- Administration activities:
  - issuing benefits summaries and/or policy books
  - enrolling employees in a benefits plan
  - providing medical questionnaires
  - collecting premiums
  - reporting incomes to the insurer
  - assisting employees in making claims
  - and more

# Administering Benefit Plans (cont.)

## ***Pittman v Manufacturers Life Insurance Company*** **[1990] N.J. No. 36.**

- Employee applied for optional life insurance for his spouse under employer's group benefits plan.
- Company's responsibility to receive the applications on behalf of the insurance company.
- Employer lost the application, never provided it to insurer.
- Employee's wife passed away.
- Insurance denied: no record of wife's application.

# Administering Benefit Plans (cont.)

## Newfoundland Court of Appeal:

- Insurance company would have accepted application if received.
- Employer was agent of the insurer for the purpose of receiving the application.
- Both employer and the insurer found liable for value of wife's coverage: \$50,000.

# Advising on Benefit Plans

What kind of details do employees want / need to know? Includes:

- The nature of the benefits offered;
- The extent of benefit coverage; and
- Requirements for eligibility.

# Advising on Benefit Plans (cont.)

What is usually alleged by the employee?

- Negligent Misrepresentation

What is negligent misrepresentation?

1. There is a duty of care based on a “special relationship”;
2. Information provided: inaccurate, misleading, or untrue;
3. The person giving the information was negligent in providing the information;
4. The recipient of the information relied reasonably on the information; and
5. The reliance resulted in damages to the recipient.

# Advising on Benefit Plans (cont.)

What kind of damages have been awarded?

- Expenses incurred by the employee
- Past or future wage loss
- Pension benefit loss
- Damages for mental distress and/or disruption and inconvenience

*An employee will generally be entitled to what was promised or told to him/her, regardless of whether it differs from the terms of the insurance policy itself.*



# Advising on Benefit Plans (cont.)

## ***Spinks v. Canada* (1996), 134 D.L.R. (4<sup>th</sup>) 223 (F.C.A.)**

- Spinks: new employee at Atomic Energy of Canada Ltd.
- Several years of experience with Australian Atomic Energy Commission.
- Attended sign on interview, received pension information booklet and pension form.
- Could have included former Australian job in years of pensionable service.
- Staffing officer did not advise Spinks of this option.

# Advising on Benefit Plans (cont.)

## Duties of employers generally:

- Information given from an employer to an employee may have a strong impact on the decisions an employee will make.
- Employers must take care in these circumstances.

## In this case:

- Mr. Spinks was in a position of “complete reliance” on the employer for the pension information he needed.
  - He was a new employee.
  - Needed information before he could choose wisely.
- Court: the employer should have realized this.

# Advising on Benefit Plans (cont.)

Critical point:

- Court finds staffing officer had responsibility to advise competently and take care in providing that advice “whether or not there was a request for advice”.
- Negligent misrepresentation includes a failure to provide information.

# Advising on Benefit Plans (cont.)

## ***Grams v Maple Leaf Metal Industries Ltd., 2006 ABQB 146***

- 22 year old worker began employment.
- Terms of benefits policy:
  - Application must be made 90-120 days after starting.
  - After that, must provide evidence of insurability.
- Employer did not advise re: application window.
- Worker applied after 120 days naming parents as beneficiaries but did not provide proof of insurability.
- Worker killed in accident the next day.

# Advising on Benefit Plans (cont.)

- Plan administrator denied benefits to parents because coverage did not commence until it received proof of insurability, which it did not.
- Parents brought claim against employer in negligence for failing to provide insurance coverage under the employment contract.

# Advising on Benefit Plans (cont.)

## Alberta Court of Queen's Bench:

- Maple Leaf had a duty to exercise reasonable care and diligence in administration of group policy.
  - Includes providing timely disclosure of the basic details of benefits coverage.
  - Must advise employees of applicable timelines for applying, and any consequences of late application.
- Not obligated to ensure the employee enrolled in the group policy, or ensure that the employee knew every detail about the provisions of the group policy.

# Advising on Benefit Plans (cont.)

## ***Feldstein v 364 Northern Development Corporation, 2016 BCSC 108***

- 36 year old married with 2 young daughters.
- Had cystic fibrosis.
- Knew he would require adequate long-term disability coverage in order to provide for family during medical leaves.
- Knew he might not be insurable in any group plans which required medical examination/questionnaire.

## Advising on Benefit Plans (cont.)

- During job search, would not accept any employment with lower level of LTD benefits than current job.
- During interviews with 364, asked to see copy of Summary of Benefits.
- Plan required “proof of good health”.
- Asked (would be) direct supervisor about “proof of good health”.
- Supervisor: working first 3 months without illness.



# Advising on Benefit Plans (cont.)

- Reality: must complete health questionnaire at time of enrolment.
- One year later, employee's health deteriorated significantly.
- Because he did not complete questionnaire, did not receive full amount of benefits.

# Advising on Benefit Plans (cont.)

## Supreme Court of BC:

- Supervisor was the central point of contact between Feldstein and the company.
- Feldstein:
  - Asked repeated questions about the company's LTD plan; and
  - Disclosed his condition to the supervisor.
- Therefore: supervisor ought to have known that LTD benefits were an essential component of Feldstein's decision-making process.
- Supervisor had a duty to ensure the statements he made were accurate and not misleading.

# Benefits and Employer Liability

## Duties of employers:

- Not limited to providing the correct information.
- Provide all necessary details for the employee to make an informed decision.
  - Anticipate the information the employee may need, based on the employee's own circumstances.
  - Not required to ensure the employee makes the right decision, but provide enough information so he/she can.
- Advise on applicable timelines and consequences of late applications.

# Best Practices

- Have a go-to benefits specialist.
  - Avoid multiple people providing information.
- Not required to know all minute details on the spot.
  - If unsure, let the employee know, take the time to find out, and follow up.
  - Rely on policy administrator.
- Avoid questions which may violate privacy.
- Keep written records of meetings and discussions.
- Provide employees with a summary of coverage prepared in consultation with the benefits administrator.

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