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News & Types: 雇用／労働法／福利厚生関連情報

処方薬プログラムの管理における信任義務とは

3/7/2024

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Practices: 雇用／労働法／福利厚生

On February 5, 2024, a class action complaint [link] was filed against Johnson and Johnson (“J&J”), its Pension and Benefits Committee, and individually named members of the Pension and Benefits Committee alleging that these Defendants breached their fiduciary duties under the Employee Retirement Income Security Act (“ERISA”) and mismanaged the J&J prescription drug benefits program. According to the complaint, the mismanagement cost the plan and eligible employees “millions of dollars in the form of higher payments for prescription drugs, higher premiums, higher deductibles, higher coinsurance, higher copays, and lower wages or limited wage growth.” In one example, the Defendants “agreed to make their ERISA plans and their beneficiaries pay **$10,239.69**” (not a typo) for a 90-day generic drug prescription that cost between $40.00 to $77.00 for the same generic drug at several well-known stores, even without insurance. According to this lawsuit, J&J’s Pharmacy Benefits Manager (“PBM”) benefitted because the difference between what the pharmacies paid for the drug and what the plan paid for the drug went “largely into the pockets of the PBM, at the expense of the ERISA plans and their beneficiaries.”

ERISA requires plan fiduciaries to discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In contrast to these basic fiduciary duties, the complaint alleges that the Defendants failed to exercise prudence before selecting the PBM, by agreeing to make their ERISA plans and beneficiaries pay unreasonable prices for prescription drugs, by allowing the PBM to enrich itself at the expense of the company’s ERISA plans and their beneficiaries, by failing to manage and oversee key aspects of the prescription drug program, and by failing to rein in the PBM’s profiteering.

As a major drug maker itself, certainly J&J is presumed to understand the prescription drug market and industry practices. For companies using PBMs to provide prescription drug benefits to employees and beneficiaries, this complaint must serve as a warning and prompt an immediate review of any PBM agreement, its drug formulary, and all costs, fees, and rebates associated with providing prescription drug benefits to employees and beneficiaries. Just as 401(k) plan fiduciaries have been named as defendants in lawsuits for

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breaching their fiduciary duties related to excessive fees, this lawsuit is likely to spark significant interest into the opaque world of prescription drug plans and their pricing, which will undoubtedly lead to additional lawsuits.

All plan fiduciaries should review this lawsuit to gain a better understanding of prescription drug benefit plans and should review their PBM arrangements to ensure they are meeting their fiduciary responsibilities related to prescription drug benefits for employees and beneficiaries.

A copy of the complaint can be accessed using this link. Please contact Frank Del Barto with any questions.

Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.

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