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When Is a Release Requirement Not a Release Requirement?

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In a bizarre opinion issued on February 20, 2007, the Sixth Circuit reversed the district court and awarded severance benefits to the plaintiff even though he had not signed the release the employer thought was a precondition to the receipt of those benefits. *Godleski v. FirstEnergy Corp., et al.*, No. 06-3448, _ F.3d _, 2007 WL 507046 (6th Cir. Feb. 20, 2007) (recommended for full text publication). Counsel for the company is considering filing a motion for reconsideration. If so, this bizarre decision may be short-lived. Until that happy day, employers need to pay attention to *Godleski*.

BACKGROUND

Lawrence Godleski was employed by FirstEnergy Solutions ("**Solutions**"), a subsidiary of FirstEnergy Corp. ("**FirstEnergy**"), from 1997 through early 2004. Godleski participated in the FirstEnergy Severance Benefits Plan ("**Plan**"), which provides severance pay and other benefits to laid-off employees.

In late January 2004, Solutions notified Godleski that his position would be eliminated and that he would be eligible for a lump sum payment of $18,226.37 under the Plan if he did not obtain another position with a FirstEnergy company by February 27. On February 24, Godleski had his exit interview and received a release that had to be returned by April 12. That same day, Godleski received a job offer from Roth Brothers Inc., ("**Roth Brothers**"), a wholly owned subsidiary of FirstEnergy. On February 27, the date of Godleski's official termination from Solutions, Godleski accepted the Roth Brothers offer and began working for it on March 1.

On April 8, four days before the release filing deadline, Godleski claimed he attempted to submit the signed release to Steve Mileski, the Plan manager. Mileski allegedly refused to accept the release, informing Godleski that his employment with Roth Brothers made him ineligible for severance benefits. Nevertheless, Mileski informed Godleski that he could seek review of the decision to deny him severance benefits from the Plan's Appeals Committee. Godleski submitted a claim, which was denied, and an appeal, which was denied for the following reasons: "The reason that benefits are denied is that in order to be eligible to receive benefits you must complete an Agreement to Release in Full. One of the provisions of the Release is an agreement that you will not seek employment with the Company, its parents, subsidiaries, divisions, or affiliates. Since you accepted employment with Roth Bros. you do not qualify for benefits." 2007 WL 507046 at *1.

LITIGATION HISTORY

Godleski then filed suit for the severance benefits. Both parties filed motions for judgment on the administrative record. Defendants argued that Godleski forfeited his right to eligibility for the severance package by: 1) failing to return a signed and witnessed release form to Steve Mileski; and 2) accepting employment at Roth Brothers. The U.S. District Court for the Northern District of Ohio granted the defendants' motion for judgment on the administrative record and denied plaintiff's motion.

Notably, the district court rejected defendants' argument that Godleski's acceptance of employment with Roth Brothers constituted a waiver of his right to severance. The court focused on language in the release that explicitly provided that Godleski would only have to agree not to apply for positions at the FirstEnergy companies "now or in the future," but which did not mention "current employment." As such, the district court held that the decision to deny Godleski severance benefits based on his acceptance of employment with Roth Brothers before the release was due was arbitrary and capricious. Nevertheless, the district court granted defendants' motion because Godleski had forfeited his eligibility for benefits by failing to timely execute the release.

THE SIXTH CIRCUIT DECISION

The Sixth Circuit reversed the district court's decision; however, it only considered the release rationale, stating

that the alternative grounds of other FirstEnergy employment had not been raised by the defendants.

The Sixth Circuit panel held that the Plan provided two alternative methods for obtaining benefits: 1) obtaining them automatically; or 2) filing a claim for benefits. The panel noted that, while the Plan provisions made clear that Godleski had to sign a release by a certain date in order to receive benefits *automatically* offered, there was no similar release requirement with respect to benefits sought by filing a claim. The Sixth Circuit noted, "In contrast to benefits received automatically, an application for benefits makes no mention of a release, much less requires the release to be signed in connection with the *request* for benefits. A claim is defined as 'a request for a Plan benefit'; claims 'must be in writing, signed by the participant . . . and submitted on the appropriate form and in a manner acceptable to the Plan administrator.' Conspicuously absent from the 'Claims Process' provision of the plan is any mention of a release agreement that must be submitted with a claim for benefits." 2007 WL 507046 at *3. The defendants had argued that execution of the release was a benefits eligibility requirement, but the Sixth Circuit unaccountably viewed it merely as a procedural aspect of the "automatic" mode of benefit availability.

PLANNING ISSUES

Most severance plans that pay substantial benefits condition them on the participants' execution of general releases. Almost no plans repeat any substantive requirements for benefits in their claim provisions. Thus few, if any, plans that condition benefits on the execution of a release say so twice, once in the substantive provisions of the plan and again in the plan's claims provisions. Cautious employers might consider amending the claims provisions in their plans to incorporate by reference all eligibility requirements, such as a release requirement. For example:

> The Plan's claims procedures do not create any independent rights to Plan benefits; an employee who files a claim for Plan benefits must satisfy all Plan requirements, such as its release requirement, to be entitled to benefits.

It also would make sense to include a short time limit on claims in severance plans so that the plaintiff cannot first sue and then later (perhaps, much later) file a claim and tender the required release:

> Any current or former employee who feels that he or she will not or has not received benefits due under the Plan must file a written claim with the Plan Administrator within the earlier of (i) six months of the date his or her employment with the Company terminated; or (ii) one month after the employee knew or should have known of his or her potential right to Plan benefits. Any claim filed after such date will be untimely.

Finally, if the plan conditions the receipt of benefits on the absence of certain types of employment, it is critical that the plan clearly specify the timing of such disqualifying employment. For example, a plan might state that a participant is prospectively ineligible for benefits if, at any time after layoff, he or she is employed by the plan sponsor or any of its affiliates.

CONCLUSION

The Sixth Circuit's short but surprising decision gives employees the opportunity to seek benefits without signing the required releases, by allowing them to seek benefits by filing a claim for benefits. Employers either should amend their benefit plans to preclude the *Godleski* rationale now or track *Godleski* and amend their plans if the decision is not promptly withdrawn.

If you have any questions about the Sixth Circuit's decision in *Godleski* or its implications for American employers, please don't hesitate to contact any of the following Paul Hastings lawyers.

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