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Employer Update

New Challenges to Independent Contractor Classifications

By Jeffrey S. Klein, Nicholas J. Pappas and Daniella Adler

In This Issue

The use of independent contractors has been a staple of many companies' staffing models for years. These workplace arrangements are facing renewed scrutiny from government agencies and the courts.[1] Two recent decisions involving the transportation industry highlight the perils of these tenuous classifications, which offer a cautionary tale that extends beyond this particular industry.

Businesses in the transportation industry frequently engage drivers whom they consider to be independent contractors to provide trucking or livery services. By using drivers who own their vehicles and operate their own companies, transportation businesses often lower their capital requirements. Furthermore, independent contractors frequently provide their services at a cost lower than the cost the wages and benefits of an employee workforce. Such businesses also avoid the regulatory and litigation burdens that come with coverage of workers under employment statutes.

Transportation businesses also face certain risks from using drivers who are independent contractors. For example, such drivers typically have the ability to work for multiple customers in the same industry, to accept or decline work requests at will and to choose their own hours. Different businesses may come to different conclusions in weighing these risks against the rewards described above.

In this month's article, we analyze two recent cases where transportation businesses suffered unexpected losses when groups of drivers asserted that they were misclassified as independent contractors. First, in *O'Connor v. Uber Technologies, Inc.*, 2015 WL 5138097, at *1 (N.D. Cal. Sept. 1, 2015) a proposed class of drivers claimed that they were employees and owed gratuities and expenses under the California Labor Code. The court certified the case as a class action. Second, in *Fedex Home Delivery & Int'l Bhd. of Teamsters, Local Union No. 671*, 361 NLRB No. 55, at *1 (Sept. 30, 2014) a group of FedEx drivers argued to the National Labor Relations Board ("NLRB") that that they were employees under the National Labor Relations Act ("NLRA") with the right to unionize. The NLRB accepted the drivers' argument and departed from the D.C. Circuit's opinion in a prior case that reached the opposite result. *Id.* at *22.

After we analyze these decisions, we will then propose several prophylactic measures businesses may consider in an effort to avoid the misclassification of drivers thought to be independent contractors.

Background

Various federal and state laws apply to workers considered "employees" but not to workers classified as "independent contractors." In responding to a continuing stream of misclassification cases over many decades, courts and administrative agencies have devised a series of legal tests they use to determine whether particular workers are "employees" under the law.

Courts and agencies emphasize various factors in implementing these legal tests under different employment statutes. We do not attempt to summarize all of these legal tests here. However, one common theme of these tests is the significant emphasis placed on the putative employer's control over terms and conditions of the workers' engagement. Courts and agencies have often looked to the Restatement (Second) of Agency § 220 (1958) to identify the factors relevant to assessing the putative employer's control over the terms and conditions of the workers' engagement. The Restatement identifies inquiries such as whether payment is by time or task, whether the job requires skill, the duration of the working relationship, who supplies the equipment, tools, and location, whether the worker operates a distinct business, if that business is the employer's regular business, and how the parties view their relationship.

Workplace arrangements that rely on independent contractors are facing renewed scrutiny from government agencies and courts.

We will refer to the factors enumerated in the Restatement as the "control" factors. State courts, federal courts, and administrative agencies use various formulations of the control factors to assess the classification of workers under the various employment laws.

Uber Drivers

The *Uber* case illustrates how courts in California applying state law will conduct a two-part inquiry in determining whether workers are employees or independent contractors. First, they will focus on the employer's "right to control work details." *Id.* at *5. Then, they will assess "secondary indicia of control," such as "the skill required" for the position, "the length of time employed," whether the work is usually performed by a specialist without supervision in that locality, and the other factors articulated in the Restatement. *Id.* at *6.

The court's application of this test to Uber's drivers first requires an understanding of Uber's business. Uber allows customers to log into a software application on their smartphone and request rides from available drivers, whom Uber considers to be independent contractors. Individual drivers sued Uber, claiming that Uber owed them and a class of similarly situated drivers gratuities and work-related expenses under California Labor Code § 351 and § 2208. *See id.* at *1. They alleged that Uber failed to reimburse their expenditures and losses incurred directly in performing work duties.[2] *See id.* They also alleged that though Uber advertised to customers that a tip is included in the cost of the fare, it failed to remit the entire amount of tips or gratuities that patrons left for drivers. *Id.*

In determining whether the misclassification issue was suitable for class treatment, the court analyzed each of the California control factors. The court first inquired into whether an employer uniformly retained "*rights* to control with regard to [an employer's] various hires," and not whether it exercised that control uniformly. *See id.* at *16. Consequently, the court rejected Uber's arguments that its training requirements or "suggestions" to drivers varied sufficiently to preclude class certification, because the *right* to control remained consistent. *Id.* at *19. The court also found that Uber's right to terminate drivers without cause could be ascertained on a class-wide basis despite seventeen different versions of driver contracts, because all provided that drivers were employees at will, a factor weighing in favor of employee status. *Id.* at *20. Moreover, Uber's statements that it exercised no control over any driver's schedules or routes meant that those issues uniformly applied to the proposed class. *Id.* at *17. The court also noted that Uber's position that its treatment of drivers varied was inconsistent with its argument on the merits that it properly classified "*every single driver*" as an independent contractor. *Id.* at *2.

Uber put forth other arguments on the secondary indicia of control required under the California law, but the court similarly found that whether they weighed for or against an independent contractor relationship, they were suitable for class certification. For example, all drivers worked for an indefinite duration, supplied their own cars, had the same opportunity to maximize profits based on managerial skill, all favoring a classification of independent contractor. *Id.* at *22-*28. But the court found that uniformity enabled it to analyze the merits with respect to the entire class. *Id.* The court also rejected Uber's argument that mandating higher prices at times of high demand to entice more drivers to accept jobs was "negotiation," rather than a unilateral decision regarding compensation applicable to all drivers. *Id.* at *17. After considering the relevant control factors, the court certified for class adjudication the question of independent contractor misclassification. *Id.* at *37.

The court next determined whether plaintiffs' tips claim under California Labor Code § 351 could be adjudicated on a class-wide basis. *Id.* at *30. California Labor Code § 351 requires an employer who "collect[s], take[s], or receive[s] any gratuity or [] part thereof" to remit that amount to the employee. Uber represented to customers that a tip is included in the price of the fare, but of its own admission, never remitted that amount to drivers. *Uber*, 2015 WL 5138097, at *31. The court found that if the drivers are employees, then Uber would be liable for unremitted gratuities. *Id.* at *32. Therefore, the court certified the tips claim as a class action as well. *Id.*

FedEx Drivers

By contrast to *Uber*, when the NLRB applied the control factors under the NLRA, it applied all the factors with equal weight. *See Fedex Home Delivery*, 361 NLRB No. 55, at *14 (Sept. 30, 2014). In *Fedex*, the NLRB brought a claim against FedEx for refusing to collectively bargain with its drivers' certified elected representative under NLRA § 8(a)(1) and (5). *Id.* at *1. FedEx argued that the drivers were independent contractors, not employees, and consequently it was not obligated to collectively bargain with the union under the NLRA. *Id.* To decide whether FedEx's classification was correct, the NLRB applied the common law control factors as articulated in the Restatement. *Id.* at *2.

The NLRB analyzed all of the control factors in Restatement of Agency and concluded that the employer controlled the drivers' work conditions. *Id.* The NLRB explained that FedEx determined work hours, routes, and number of packages delivered. *Id.* at *18. It also found that the drivers' FedEx uniforms, the mandatory logo on their vehicles, and their use of FedEx's scanner system to log and track package deliveries meant that the drivers "[did] business in the name of FedEx rather than their own." *Id.* Other indicia of employer control included audits to ensure that drivers complied with FedEx policy "governing dress, appearance, safety, and the details of package delivery," and the use of contracts with automatic renewal, creating indefinite terms of employment. *Id.*

In determining whether the misclassification issue was suitable for class treatment, the *Uber* court … inquired into whether Uber uniformly retained "*rights* to control with regard to its various hires," … and rejected Uber's arguments that its training requirements or "suggestions" to drivers varied sufficiently to preclude class certification, because the *right* to control remained consistent.

In analyzing whether the evidence showed that the drivers render services as an independent business, the NLRB stated that though drivers could theoretically sell their routes, hire helpers and employ additional drivers, any "possibility for meaningful economic gain" was limited, because FedEx "retain[ed] the right to curtail or reconfigure" routes, and "exercise[d] considerable control over whether a driver may sell [routes] at all, to whom, and under what circumstances." *Id.* at *19-*20. The NLRB noted that the driver's scheduling arrangement "effectively prevent[ed] them from working for other employers," and found no evidence that any employee had used their vehicle for other commercial purposes. *Id.* at *21.

The NLRB rejected the D.C. Circuit's opinion in *FedEx Home Delivery v. N.L.R.B.*, 563 F.3d 492, 497 (D.C. Cir. 2009), a case involving the status of drivers "performing the same job at two FedEx Home Delivery facilities" in another location. 361 NLRB No. 55, at *1. In that case, the D.C. Circuit found that FedEx drivers were independent contractors by applying the control factors differently. *FedEx*, 563 F.3d at 497. The D.C. Circuit distanced itself from the "unwieldy control factors," and emphasized just one: "whether the position presents the opportunities and risks inherent in entrepreneurism," or "entrepreneurial opportunity." *Id.* It noted that FedEx did not "prescribe hours or work, whether or when the contractors take breaks, what routes they follow or other details of performance," and that the drivers provided their own vehicles. *Id.* at 498. The court found that drivers had "entrepreneurial opportunity" because they could theoretically, "remove or mask all FedEx logos or markings" to work for another company, "assign at law their contractual rights to their routes without FedEx's permission," or hire their own subcontractors to perform their duties. *Id.* at 498-99, 500.

In analyzing the "entrepreneurial opportunity" factor, the D.C. Circuit focused on "opportunity," not whether drivers actually engaged in entrepreneurial activity. *Id.* Even "one instance" of a driver using an opportunity to engage in entrepreneurial pursuits would be sufficient to classify similarly situated drivers as independent contractors, according to the D.C. Circuit. *Id.* at 502.

Practice Pointers

To avoid the pitfalls experienced by Uber and Fedex, transportation businesses that wish to engage drivers as independent contractors should consider taking steps to minimize the risk of liability under the federal or state employment laws as follows:

- Perform an internal review of the classification of drivers as independent contractors to ensure that the terms and conditions of the engagement would withstand scrutiny under the applicable state or federal employment laws;
- Consider allowing drivers flexibility over their schedules, routes, and which jobs to take.
- Consider allowing drivers to work for other businesses or customers, and to use their vehicles for other jobs, so as to establish that the drivers are faced with the "risks and opportunities inherent in entrepreneurism."
- To the extent possible, negotiate contracts individually with each driver and avoid "one-size-fits all" contracts which drivers may argue gives them the right to litigate their employment status as a class.
- Consider including arbitration clauses which specify that all litigation by the driver will be asserted individually, and not in connection with any class action.

1. *See e.g. Misclassification Initiative*, Dep't of Labor, http://www.dol.gov/whd/workers/misclassification (last visited Sep. 29, 2015); Robert W. Wood, *FedEx Settles Independent Contractor Mislabeling Case For $228 Million*, Forbes, (Jun. 16, 2015, 8:39 A.M.), http://www.forbes.com/sites/robertwood/2015/06/16/fedex-settles-driver-mislabeling-case-for-228-million/
2. The court found that the class representative was inadequate with regard to expense reimbursement claims, and did not certify that claim for class treatment. We will not discuss that claim here.

Recent Developments in ERISA's Church Plan Exemption

*By Millie Warner**

The Employee Retirement Income Security Act of 1974 (ERISA) governs most retirement and health and welfare plans sponsored by private sector employers for their employees. ERISA's so-called "church plan exemption," however, excludes plans sponsored by churches from ERISA coverage, unless such plans affirmatively elect to be subject to ERISA. For decades, the federal courts and agencies charged with interpreting ERISA agreed that ERISA's church plan exemption extends not only to plans sponsored by churches, but also to plans sponsored by organizations that are affiliated with churches, such as church-affiliated schools and hospitals.

In recent years, however, a series of putative class-action lawsuits has been filed across the country challenging application of the church plan exemption to plans sponsored by church-affiliated organizations.[1] Those suits allege that ERISA permits only churches to establish church plans, and so plans established by church affiliates that purport to be exempt from ERISA are in fact subject to—and in violation of—the statute, including its reporting, accrual, vesting, and funding requirements, as well as the requirement to pay pension insurance premiums to the Pension Benefit Guaranty Corporation. This recent wave of church plan litigation has led at least three federal district courts to break from the long-settled interpretation that church-affiliated organizations may take advantage of the church plan exemption and hold that the exemption covers only plans established by churches themselves.[2] These three cases are currently before courts of appeal on interlocutory appeals.[3]

In this article, we analyze the current state of the law on the ERISA church plan exemption and offer advice for church-affiliated employers in light of the fluctuating state of the law.

Background

From the time of its enactment in 1974, ERISA has exempted "church plans"—defined as plans "established and maintained" by a church for its employees—unless such plans elect to be governed by ERISA. ERISA § 3(33)(A). In 1980, however, Congress amended the statute to expand the church plan exemption in two ways. First, Congress provided that church plans include plans "maintained" by a church controlled or associated organization whose "principal purpose or function" is administering or funding the plan for church employees. ERISA § 3(33)(C)(i). Second, Congress provided that church plans may cover the employees of church-affiliated entities. ERISA § 3(33)(C)(ii)(II).

In recent years, a series of putative class-action lawsuits has been filed across the country challenging application of ERISA's church plan exemption to plans sponsored by church-affiliated organizations.

For more than thirty years, federal courts—including the only two appellate courts to consider the issue—interpreted the church plan exemption to encompass not just plans established by churches, but also plans established by non-church entities that are affiliated with churches.[4] Based on the 1980 amendment extending the exemption to plans maintained by tax-exempt organizations "controlled by or associated with a church," many courts concluded that the relevant inquiry for determining whether a plan qualifies as a church plan is not whether the plan was established by a church, but whether the plan was established by an organization that is "controlled by or associated with" a church. *See, e.g., Thorkelson*, 764 F. Supp. 2d at 1127. The Department of Labor[5] and the Internal Revenue Service[6] concurred with this interpretation. As a result, plans established by an array of entities affiliated with churches—including hospitals, healthcare corporations, and even book publishers—were held to be church plans exempt from ERISA, so long as they established that they were controlled by or affiliated with a church.[7]

Courts Break with Three Decades of Precedent on the Church Plan Exemption

In the last few years, however, a wave of putative class action lawsuits has been filed against various non-profit hospitals affiliated with churches challenging this settled

interpretation of ERISA's church plan exemption. *See supra* at n.1. Notwithstanding more than three decades of precedent to the contrary, the plaintiffs in these actions argue that plans established by church affiliates do not qualify as church plans because they are not "established and maintained" directly by a church.

On December 12, 2013, the United States District Court for the Northern District of California issued its opinion in *Rollins v. Dignity Health*, 19 F. Supp. 3d 909 (N.D. Cal. 2013), becoming the first court, in the recent wave of church plan litigation, to hold that only churches may establish church plans. *Rollins* concerned pension plans sponsored by Dignity Health, which operates a health care conglomerate and ancillary care facilities and is associated with the Roman Catholic Church. Dignity operated its pension plans as exempt from ERISA, in reliance on ERISA's church plan exemption. The plaintiffs, however, argued that Dignity's plans did not qualify as church plans because Dignity was not itself a church, and the plans were thus subject to and in violation of ERISA, including its minimum funding obligations. In particular, the plaintiffs alleged that Dignity's plan was underfunded by $1.2 billion.[8] Dignity moved to dismiss the complaint, arguing that although it was not a church, its plans were entitled to church plan status because of Dignity's church affiliation.

At least three federal district courts have broken from the long-settled interpretation that church-affiliated organizations may take advantage of ERISA's church plan exemption, and held that the exemption covers only plans established by churches themselves.

The court denied Dignity's motion to dismiss, holding that only a church can establish an ERISA-exempt church plan. The court rejected Dignity's argument that the 1980 amendment expanding the definition of a church plan to include plans "maintained by a [church-associated] organization" (ERISA § 3(33)(C)(i)) meant that church-affiliated organizations may "establish" church plans. The court held that ERISA § 3(33)(A) limits the entities that can "establish" church plans to churches, and section (C)(i) merely expands the entities that can "maintain" church plans, permitting a plan established by a church to retain its church plan status even though a church-affiliated organization, rather than the church itself, maintains the plan. *Id.* The court reached this conclusion based on a "plain meaning" interpretation of the statute, supported by the legislative history, which the court said suggested that the purpose of the 1980 amendment was "to permit churches to delegate the administration of their benefits plans to specialized church pension boards without losing their church plan status," not "to broaden the scope of organizations who could *start* a church plan." *Id.* at 915-16. Moreover, even putting aside the establishment issue, section (C)(i) limits the church-affiliated organizations that may "maintain" church plans to organizations whose "principal purpose or function" is "the administration of a plan or program" for church employees. *Id.* at 915. Dignity—"a healthcare organization," whose "mission is the provision of healthcare"—failed to meet that requirement. *Id.*

The court acknowledged that its holding contradicted decades of precedent. The court, however, "decline[d] to defer" to the IRS's statutory interpretation, reflected in more than three decades of private letter rulings, finding the statute clear and the IRS's reasoning "conclusory." *Id.* at 913 & n.3. The court was similarly unpersuaded by the extensive case law from other jurisdictions interpreting the church plan exemption as extending to plans maintained by church affiliates, describing that precedent as "flawed."[9]

After *Rollins*, two other federal district courts followed suit, also holding that only churches may establish ERISA-exempt church plans. *See Kaplan v. Saint Peter's Healthcare System*, 2014 WL 1284854 (D.N.J. Mar. 31, 2014); *Stapleton v. Advocate Health Care Network*, 76 F. Supp. 3d 796 (N.D. Ill. 2014). All three such cases have been certified for interlocutory appeal and are currently pending before the Third, Seventh and Ninth Circuit Courts of Appeals. *See supra* at n.3.

Advice for Employers

Church-affiliated employers that sponsor employee benefit plans should be aware that with the current trend of the plaintiffs' bar targeting the ERISA exempt status of plans sponsored by church affiliates, their plans could be at risk for potential litigation. With the law on the church plan exemption in a state of flux, church-affiliated employers that sponsor employee benefit plans should monitor the developments in this area, and, in particular, keep a close watch on the three church plan cases pending before the courts of appeals. The outcome of those cases could have far-reaching implications for church-affiliated organizations that operate their plans as exempt from ERISA based on their affiliation with a church. If the plaintiffs' view prevails and such plans do not, in fact, qualify as church plans, the financial impact on church-affiliated organizations for bringing their plans into compliance with ERISA's funding and other requirements could be enormous. In the meantime, as the law on the scope of the church plan exemption continues to develop, church-affiliated employers that sponsor employee benefit plans may wish to review the structure, operation, and funding levels of their plans to better evaluate the issues that could arise if their plans were subject to a similar challenge.

** Associate Justin DiGennaro contributed to the drafting of this article.*

1. *See Chavies v. Catholic Health East*, No. 2:13-cv-01645 (E.D. Pa.) (filed Mar. 28, 2013); *Overall v. Ascension*, No. 2:13-cv-11396 (E.D. Mich.) (filed Mar. 28, 2013); *Rollins v. Dignity Health*, No. 3:13-cv-01450 (N.D. Cal.) (filed Apr. 1, 2013); *Kaplan v. Saint Peter's Healthcare Sys.*, No. 3:13-cv-02941 (D.N.J.) (filed May 7, 2013); *Medina v. Catholic Health Initiatives*, No. 1:13-cv-01249 (D. Colo.) (filed May 10, 2013); *Stapleton v. Advocate Health Care Network*, No. 1:14-cv-01873 (N.D. Ill.) (filed Mar. 17, 2014); *Owens v. Saint Anthony Medical Center*, No. 1:14-cv-04068 (N.D. Ill.) (filed June 2, 2014); *Lann v. Trinity Health Corporation*, No. 8:14-cv-02237 (D. Md.) (filed July 11, 2014); *Morris v. Daughters of Charity Health System*, No. 3:14-cv-4681 (N.D. Cal.) (filed Oct. 21, 2014); *Griffith v. Providence Health & Services*, No. 2:14-cv-01720 (W.D. Wash.) (filed Nov. 7, 2014); *Tucker v. Baptist Health System, Inc.*, No. 2:15-cv-00382 (N.D. Ala.) (filed Mar. 3, 2015); *Carver v. Presence Health Network*, No. 1:15-cv-02905 (N.D. Ill.) (filed Apr. 2, 2015).
2. *Kaplan v. Saint Peter's Healthcare Sys.*, 2014 WL 1284854 (D.N.J. Mar. 31, 2014); *Rollins v. Dignity Health*, 19 F. Supp. 3d 909 (N.D. Cal. 2013); *Stapleton v. Advocate Health Care Network & Subsidiaries*, 76 F. Supp. 3d 796 (N.D. Ill. Dec. 31, 2014). Some federal courts have recently reaffirmed the long-standing rule that church-affiliates may establish ERISA-exempt church plans. *See Overall v. Ascension Health*, 23 F. Supp. 3d 816 (E.D. Mich. 2014); *Medina v. Catholic Health Initiatives*, 2014 WL 4244012 (D. Colo. Aug. 26, 2014); *Lann v. Trinity Health Corp.*, No. 8:14-cv-02237 (D. Md.), Order, Feb. 24, 2015, ECF No. 54.
3. *Rollins v. Dignity Health*, No. 15-15351 (9th Cir. Feb. 26, 2015); *Stapleton v. Advocate Health Care Network & Subsidiaries*, No. 15-1368 (7th Cir. Feb. 25, 2015); *Kaplan v. Saint Peter's Healthcare Sys.*, No. 15-1172 (3d Cir. Jan. 20, 2015).
4. *See, e.g., Chronister v. Baptist Health*, 442 F.3d 648 (8th Cir. 2006); *Lown v. Cont'l Cas. Co.*, 238 F.3d 543 (4th Cir. 2001).
5. *See, e.g.*, DOL Advisory Opinions 96-19A, 95-30A, 95-13A, 95-12A, 95-10A, 95-09A, 95-08A, 95-07A, 95-02A, 94-36A, 94-34A, 94-18A, 94-16A, 94-15A, 94-13A, 94-12A, 94-11A, 94-10A, 94-09A, 94-08A, 94-06A, 94-05A, 94-04A, 93-08A, 93-07A, 93-03A, 93-01A, 92-09A, 91-46A, 91-41A, 91-22A, 91-14A, 91-13A, 91-12A, 91-11A, 91-10A, 90-13A, 90-12A.
6. *See, e.g.*, IRS PLR 201319036, 2013 WL 1928485 (May 10, 2013). In an amicus brief filed with the Ninth Circuit Court of Appeals in *Rollins v. Dignity Health*, the Pension Rights Center stated that the IRS's interpretation of the church plan exemption as extending to plans established by organizations controlled by or associated with a church "has been reflected in 500 IRS 'church plan rulings' over the past 32 years." Brief of Amicus Curiae Pension Rights Center in Support of Plaintiff-Appellee and Affirmance at 7, *Rollins v. Dignity Health*, No. 15-15351 (9th Cir. Sept. 15, 2015), ECF No. 68-2.
7. *See, e.g., Overall v. Ascension*, 24 F. Supp.3d 816 (E.D. Mich. 2014) (hospital conglomerate); *Medina v. Catholic Health Initiatives*, 2014 WL 4244012 (D. Colo. Aug. 26, 2014) (healthcare corporation); *Coleman v. Pikeville United Methodist Hosp., Inc.*, 2008 WL 819038 (E.D. Ky. Mar. 25, 2008) (hospital); *Ward v. Unum Life Ins. Co. of Am.*, 2010 WL 4337821 (E.D. Wis. Oct. 25, 2010) (healthcare corporation); *Humphrey v. Sisters of St. Francis Health Servs., Inc.*, 979 F. Supp. 781 (N.D. Ind. 1997) (hospital); *Taylor v. Sisters of St. Francis Health Servs., Inc. Ltd. Trust Health Benefit Plan*, 2006 WL 2457202 (S.D. Ind. Aug. 23, 2006) (hospital); *Friend v. Ancilla Sys. Inc.*, 68 F. Supp. 2d 969 (N.D. Ill. 1999) (healthcare support services corporation); *Catholic Charities of Maine, Inc. v. City of Portland*, 304 F. Supp. 2d 77 (D. Me. 2004) (social services

organization); *Rinehart v. Life Ins. Co. of N. Am.*, 2009 WL 995715 (W.D. Wash. Apr. 14, 2009) (healthcare corporation); *Welsh v. Ascension Health*, 2009 WL 1444431 (N.D. Fla. May 21, 2009) (healthcare corporation); *Torres v. Bella Vista Hosp., Inc.*, 639 F. Supp. 2d 188 (D.P.R. 2009) (hospital); *Thorkelson v. Publ'g House of Evangelical Lutheran Church in Am.*, 764 F. Supp. 2d 1119 (D. Minn. 2011) (publisher); *Hall v. USAble Life*, 774 F. Supp. 2d 953 (E.D. Ark. 2011) (hospital); *Medellin v. CommunityCare HMO, Inc.*, 787 F. Supp. 2d 1259 (N.D. Okla. 2011) (healthcare corporation); *Polk v. Dubuis Health Sys.*, 2007 WL 2890262 (W.D. La. Sept. 28, 2007) (healthcare corporation).

8. *Rollins v. Dignity Health*, No. 3:13-cv-01450 (N.D. Cal.), Compl. ¶¶ 1, 55, Apr. 1, 2013, ECF No. 1.

9. *Id.* at 916 (explaining that several courts had "read section (C)(i) language of who may *maintain* a church plan to abrogate the limitations clearly set out in section A on who can *establish* a church plan," while others had "overlooked the express limitation on section C(i) that an organization maintaining a church plan must have as its 'principal purpose or function … the administration or funding of a [benefits plan]' and cannot simply be a church-affiliated healthcare organization, or publishing house," and "still others [had] read into the statue's broad definition of employees who may be covered by a church plan, a completely different idea that church-affiliated organizations may start their own church plans").

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