Is Your Short Term Disability (STD) Covered by ERISA?

By: Alex Mattingly on March 14, 2018 on graydon.law

Generally, ERISA covers any plan, fund, or program that provides sickness, accident, or disability benefits. This would include all short term disability (STD) programs but for an exception that has been made regarding payroll practices. To determine whether a plan fits within this safe harbor exception, the label and intent of the employer are not controlling. Instead, an employer must answer these 4 questions about their STD programs:

1. Who is getting paid? If an STD program provides payments to individuals other than employees, then the program will not fit within the payroll safe harbor and ERISA will govern. Payments must be made to individuals that retain their employee status while absent from work. If a STD program includes payments to former employees, such as those permanently disabled or those that were terminated, then the program will not qualify for the safe harbor. It is crucial that employers address what effect termination of employment will have on the STD benefits they receive.

2. How much are the payments? A program that pays an employee more than their normal compensation will not fit within the safe harbor. To be considered a payroll practice, payments must be equal to or less than normal compensation. Most employers’ STD programs pay less than normal compensation, so this factor is rarely an issue.

3. What source is the payment coming from? Payments must be paid out of an employer’s general assets. A STD program that sources payments to employees from either insurance or a separately funded program will fail to fit within the safe harbor.

4. Why are the payments being made? To fit within the safe harbor, the Department of Labor made this safe harbor exception for the payments that are made when “the employee is either physically or mentally unable to perform work related duties, or is otherwise absent for medical reasons.” Examples include absence due to maternity leave, physical examination, or psychiatric treatment.

Now that you can determine whether your program is covered by ERISA, why do you need to know? First, an ERISA covered program requires extra compliance steps (including having a summary plan description and filing Form 5500), which creates more administrative burden for employers. But if a dispute arises, ERISA covered plans are subject to federal law. An employer might benefit from being in federal court because there
are no jury trials, no compensatory or punitive damages, relief is limited to amount of benefit in question, and claims administrators may receive a deferential standard of review. If you would like to discuss whether or not you should make your STD program a payroll practice or an ERISA covered plan, please reach out to a Graydon attorney.