

MEMORANDUM

To: Clients & Friends
From: Anna Elento-Sneed, Esq.
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Date: November 23, 2015
Subject: **Hawaii Supreme Court – ERISA preemption is broad and may eliminate your rights under state law**

On May 27, 2015, the Hawaii Supreme Court issued a reminder about the harshness of the Employee Retirement Income Security Act's ("ERISA") personal liability provisions, and the broad preemption under ERISA in its decision in Rodrigues v. United Public Workers, AFSCME Local 646, AFL-CIO. Without taking adequate service providers and proper insurance coverage, an employer can be personally liable for steep penalties and judgments for lawsuits under ERISA.

I. Facts of the Case

In 1998, Gary Rodrigues, in his capacity as administrator of the health plan known as UPW's Mutual Aid Fund ("Health Plan"), made a \$1.1 loan to Best Rescue Systems ("Best") as a plan investment. Best did not repay the Health Plan, and the Health Plan sued Rodrigues for fiduciary breach under ERISA, for making imprudent investments.¹ Rodrigues was ordered to repay the Health Plan \$850,000. In response to the judgment against him, Rodrigues sued AFSCME Local 646, AFL-CIO, the union that sponsors the Health Plan ("Union"),² to indemnify him for acting as an agent of the Union.

II. Holding of the Case

The Hawaii Supreme Court agreed that ERISA's broad preemption provisions prevented Rodrigues from asserting his state law claim. The Court emphasized that under ERISA's framework, fiduciaries are personally liable for their misconduct and any agreements or arrangements that attempt to limit a fiduciary's liability are invalid.³ Since the union operated solely on membership dues, the court recognized that if Rodrigues were able to proceed with his claim, he would be seeking indemnification from the same individuals who were participants of the Health Plan that he harmed, which was akin to him avoiding his fiduciary liability. Had the lawsuit been against a traditional employer, rather than a union, the Court may have allowed the lawsuit to proceed.

¹ ERISA Section 404.

² The majority of the Union members were government employees, but some were also private-sector employees. If 100% of the employees were government employees, the Health Plan may have been considered a government plan not governed by ERISA.

³ ERISA Section 401.

III. Key Takeaways for Employers

The case emphasizes the importance of:

1. Having adequate fiduciary liability insurance that covers the employer and its employees in their capacities as fiduciaries;
2. Adequately training employees for their fiduciary functions; and
3. Hiring qualified service providers to assist with, or to completely handle fiduciary functions, such as making investments.

By hiring qualified professionals and training your staff, you will minimize the amount of costly fiduciary breaches within your organization. And if you occasionally do have a claim for breach of fiduciary duty, a good fiduciary liability insurance policy will minimize your losses.

Speak with your insurance broker to ensure you have adequate fiduciary liability coverage, and speak with your benefits consultant, or give us a call, if you have any questions about fiduciary functions or need assistance with finding qualified professionals to work with your plans.