

Beware! Automatic Beneficiary Revocation Law Not Effective for ERISA and Federal Life Insurance and Retirement Benefits

By Clark B. Williams

Be careful in relying on the new “automatic beneficiary revocation” statute, ORS 107.118 - 107.131 (2005 Oregon Laws Chapter 285) as it applies to employer-provided ERISA¹ benefits (both life insurance and retirement benefits) and to federal employment benefits.

This new statute provides that beneficiary designations in favor of a former spouse are automatically revoked if so provided in the judgment of dissolution or unlimited separation. The statute applies broadly to beneficiary designations of all types, expressly including ERISA and federal employment benefits. However, the statute is pre-empted by federal law with regard to those benefits.

So said the U S Supreme Court in *Egelhoff v. Egelhoff*, 532 US 141 (2001), involving a similar Washington State statute. In that case, a Boeing employee died in a car accident two months after divorcing his wife and before removing her as beneficiary of his employer-provided life insurance and retirement benefits. Washington law provided for automatic revocation on divorce of all designations of “nonprobate assets” in favor of a former spouse. Notwithstanding the statute, Boeing paid the benefits to the former wife, and the husband's children by prior marriage brought suit. In a 7-2 decision, the Supreme Court held that the Washington statute was pre-empted by ERISA and confirmed the payment of benefits to the former wife. In its opinion, the Supreme Court recognized that all employer-provided life insurance and retirement benefits are governed by ERISA, and that ERISA itself provides that it “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.”² ERISA requires that each plan shall “specify the basis on which payments are made to and from the plan”³ and that each plan must be administered “in accordance with the documents and instruments governing the plan.”⁴ The Court recognized Congress' goal to allow each ERISA plan to have a nationally uniform system of plan administration. “Differing state regulations affecting an ERISA plan's system for processing claims and paying benefits impose precisely the burden that ERISA preemption was intended to avoid.”⁵

Therefore, Oregon's new statute will not be applicable to ERISA plans, despite its express reference to ERISA. Instead, the terms of the plan will control. Indeed, some plans do provide that, upon receipt of notice regarding the divorce of a participant, beneficiary designations are automatically revoked. However, most plans do not so provide.

So, what is an ERISA plan? Generally, ERISA governs all “qualified retirement plans” and all “welfare benefit plans” sponsored by private sector employers. “Qualified retirement plans” include 401(k) plans, profit sharing plans, defined benefit plans, employee stock ownership plans (ESOPs), money purchase pension plans and cash balance pension plans. “Welfare benefit plans” include non-retirement employee benefits, including life insurance, health insurance, cafeteria plans and vacation pay plans.

However, ERISA does not apply to plans which cover only the business owner and/or the owner's spouse.⁶ Therefore, for example, the profit sharing plan of a self-employed real estate agent who has no employees is not an ERISA plan.

Also, ERISA does not apply to deferred compensation plans (also known as 457 plans), stock option plans, SEP-IRAs, SIMPLE plans, 403(b) plans (also known as tax sheltered annuity plans) or IRA accounts. And ERISA does not apply to retirement or welfare benefit plans sponsored by state and local government employers. This would include Oregon PERS. For all these types of plans, the new statute should be fully effective.

The other large group of plans to consider are the federal plans, specifically: the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Thrift Savings Plan (TSP), military retirement benefits, and Federal Employees Group Life Insurance (FEGLI). The new Oregon statute purports to apply to these programs, as well. However, the effectiveness of the statute on these programs is extremely doubtful. No benefits are paid to a former spouse from CSRS, FERS or military retirement system unless specifically provided in a court order. So as a practical matter, the only systems to be concerned with are TSP and FEGLI.

Specifically, the TSP regulations provide that the beneficiary designation on file with the government at the time of death controls the payments of the TSP account at death.⁷ And the FEGLI statute does the same.⁸ There is no provision under either federal scheme for automatic revocation of a designation on divorce. Further, the Office of Personnel Management, which administers FEGLI, has stated, with regard to designations: “. . . the FEGLI law preempts state law . . .”⁹ So there is little doubt that the new Oregon statute will be ineffective to revoke a designation with respect to a federal employee's TSP or FEGLI benefits.

In summary, don't rely on new ORS 107.118-.131 and the divorce judgment to automatically revoke beneficiary designations for ERISA and federal retirement and life insurance benefits. The new statute is preempted by ERISA and federal law with respect to those benefits. Instead, you should still instruct your clients to affirmatively change their beneficiary designations, and document your file accordingly.

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Footnotes:

¹ Employee Retirement Income Security Act of 1974, as amended, 29 USC 1001 et..seq.

² 29 USC ‘1144(a).

³ 29 USC ‘1102(b)(4)

⁴ 29 USC ‘1104(a)(1)(D)

⁵ 532 US at 142, 150.

⁶ 29 CFR ‘2510-3.3

⁷ 5 CFR ‘1651.2. Also 5 CFR ‘1651.4 provides that the exclusive way for a member to change a beneficiary is to complete and file a new beneficiary form or a revocation form. “A will, or any document other than Form TSP-3 or Form TSP-11-B may not be used to change or cancel a beneficiary(ies) of a TSP account.” Id.

⁸ 5 USC ‘8705(a)

⁹ Handbook for Court-ordered Retirement, Health Benefits and Life Insurance (1997), p. 124.