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"IT'S THE LAW"

A column by William D. Hager, Esq., Des Moines, Iowa

In a recent law review article, Larry D. Zimpleman, F.S.A., and I argue, in addition to other contentions, that the *Norris* decision leaves a pressing question unanswered: What degree of employer involvement will cause a benefit to become a Title VII "term, condition or privilege" of employment to which *Norris* applies?

There seems little disagreement that the usual array of employer-sponsored and -funded group benefits are within *Norris*. The more difficult question arises with individual or group products that have minimal employer involvement but are arguably within the employment context. Since consulting actuaries and actuaries employed by Title VII employers and insurers will be called upon to offer their reflections on this question, it merits the profession's consideration.

Employer Nexus

Consider first the types of employer action or employment connection, sometimes called "employer nexus", that may raise questions about applicability of Title VII and therefore *Norris*, either because (a) the nexus was identified in the *Norris* decision, or (b) it otherwise raises a question of employer involvement. It appears that any of the following types of employer involvement will raise the spectre of Title VII applicability:

(1) if the employer makes payroll deduction available to facilitate a benefit offering;

(2) if the employer grants employees time off to attend meetings to learn about benefit offerings.

(3) If, as Justice O'Connor noted, an employer collects contributions and then disburses the resulting benefits, it is no defense to Title VII applicability that the benefit is offered through or by a third party.

Criteria

The following criteria seem likely to be considered by the court and others in judging the issue: whether the benefit (1) provides an *economic value* to the employee as a result of (a) reduced premiums, including noncontributory benefits, (b) lessened paper work, e.g., because of employer-provided payroll deduction, or (c) reduced risk, perhaps because the employer selects sound insurers; or (2) would not otherwise be available to the employee *but for* the underlying employment relationship.

Evaluation

A useful approach to evaluating the employer nexus is to rank each benefit activity at issue on a scale from 1 (lowest) to 7 (highest) in terms of likelihood of *Norris* applicability. Rankings such as the following may emerge if each incident is assumed to be the only employer or employment action under consideration:

— The employer furnishes a list of its employees to insurance agents who successfully solicit them (1);

— The benefit, e.g., an individual product, is described in a brochure distributed by the employer (2);

— The benefit is merely explained on the employer's premises—without employer approval (1), with employer approval (3);

— The benefit is explained during time off granted by the employer (4), after hours (2);

— Without other participation, the benefit is provided by an insurer "approved by" the employer (5);

— A guaranteed-issue benefit is offered (6);

— The employer makes payroll deductions available to facilitate the offering (6);

— The benefit is offered at a reduced rate—as a result of employer contribution (7), as a result of the insurer's marketing strategy (6), at a rate available under an automatic checking account or similar program (6);

— The benefit is described by the employer in terms such as "a benefit of employment", but has no other distinguishing feature (6);

— Benefits are offered because of a past employment relationship, e.g., policy conversions (7);

— Participation in the benefit is a condition of employment (7). □

HOW ACTUARIES ARE USING PERSONAL COMPUTERS

by Willis B. Howard, Jr.

From an enquiry that I made to Southeastern Actuaries Club members, I can report how some actuaries are using personal computers in their work. This isn't a scientific sample, just a story from 25 actuaries in that number of companies or consulting firms. It does seem though that actuaries are far above the 3% of individuals and 7% of businesses that are said to be using this rather new tool.

There were 24 applications in product development, including profit testing, reserve, cash value and dividend calculations and policy drafting. Twenty actuaries used their PCs to develop sales material, mostly ledger statements for traditional and universal life products.

PC aids to corporate financial management embraced budgeting, long range planning, and a variety of model office projections. Applications to office functions such as word processing and file management were also reported. Four responders mentioned electronic mail.

Equipment

As might be expected, the two most popular commercial software packages used were the spreadsheet and the word processor. Among 19 internally constructed programs, BASIC was by far the most popular language (13 actuaries); Assembler, COBOL and Pascal were also mentioned. Closely bunched as the three leading machines were IBM, Apple, and TRS; Commodore, Epson, Hewlett Packard, Siemens, Texas Instruments and Wang also have their adherents.

RAM sizes 128K and 256K predominated, but our group had 6 using more than the latter, and 6 using 64K or less. Most of the configurations had two disks.

Observations

How does one justify the investment in what one actuary called "the ultimate in executive toys"? Thirteen responded "Increased Productivity"; but only 3 said they had measured this and their measures seemed impressions rather than demonstrations. Others spoke of cost savings and increased accuracy, experimental and educational value. Three asserted that they couldn't do their job without their PC; many of us, I believe, will soon be echoing this.

Readers wishing more details are welcome to request a summary of the survey replies from me at my Yearbook address.