

Seventh Circuit Joins Ranks of Courts Holding that Internal Grievances about Employer Fiduciary Duty Breaches is Actionable Under ERISA Section 510

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In [Victor George v. Junior Achievement of Central Indiana Inc.](#), decided September 24, 2012, the **Seventh Circuit** joined the Fifth and Ninth Circuits in holding that Section 510 of ERISA applies to unsolicited, informal grievances to employers. The courts of appeals have disagreed about the scope of §510, and the Second, Third and Fourth Circuits have permitted Section 510 retaliation claims only where the person's activities were made a part of formal proceedings or in response to an inquiry from employers (i.e., §510's language does not protect employees who make "unsolicited complaints that are not made in the context of an inquiry or a formal proceeding."). Concluding that the language of Section 510 of ERISA was "ambiguous" and "a mess of unpunctuated conjunctions and prepositions," the Seventh Circuit concluded that, "an employee's grievance is within §510's scope whether or not the employer solicited information." The court did, however, reiterate the high threshold to prevail on a Section 510 claim: "It does 'not mean that §510 covers trivial bellyaches—the statute requires the retaliation to be 'because' of a protected activity.... What's more, the grievance must be a plausible one, though not necessarily one on which the employee is correct."

Section 510 of ERISA prohibits retaliation "against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this [Act]." Remedies for violation of that section are limited to "injunctive and other appropriate equitable relief," which would not include back pay typically, but could include an injunction and reinstatement. Attorney's fees are also possible. In the case, Victor George was a former vice president of Junior Achievement who sued his former employer alleging he was terminated after complaining that money withheld from his pay was not being deposited into his retirement and health savings accounts. He complained to management, outside accountants, the board, the Department of Labor (although he did not file a complaint). The District Court dismissed the case on summary judgment, holding George's informal complaints to his employer did not constitute an "inquiry" under ERISA. The appellate court reversed holding that George's informal proceedings do trigger the statute's protections.

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