

## Employment Tip of the Month – April 2024

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**Q:** The company insuring our employees' voluntary life insurance plan has denied a claim because the employee was not properly enrolled. Now the beneficiary is demanding that we pay the claim. Can we be liable for benefits under an insured plan where we pay no premiums?

**A:** While claims such as this against an employer are fact-specific, there is the potential for liability. Most voluntary life plans require a person applying for coverage to submit Evidence of Insurability (also known as Proof of Good Health) if they seek coverage above a certain amount or if they are a late enrollee. Coverage does not go into effect until the application is approved by the insurer. Sometimes, an employer will pay premiums when Evidence of Insurability has not been submitted or it has been denied. Whether there is liability depends on the respective responsibilities of the employer and insurer for enrollment *under the law and based on the language in the policy*.

In one such lawsuit, a court found that the employer, not the insurer, breached a fiduciary duty by failing to properly enroll the employee. The court explained that:

[Employer], not [insurer], was responsible for assessing [employee's] eligibility for and enrolling [employee] in her benefits plan. The core of [employee's] dispute was therefore with [employer]. Even if [insurer] could have checked [employer's] work to confirm that [employee] had been properly enrolled, it had no duty to do so and any failure in that regard pales in comparison to [employer's] gross negligence and does not rise to the level of extraordinary circumstances or equitable fraud. *Sullivan-Mestecky v. Verizon Communications, Inc.*, 961 F.3d 91 (2d Cir. 2020).

Employers sponsoring insured benefit plans should make sure that they are familiar with the eligibility requirements stated in the policy and that premiums are submitted to the insurer *only for those individuals who satisfy the requirements*. Otherwise, they could be liable for paying the benefits claimed.

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