

Glossary – L

Leased Employee – The term *leased employee* means any person who is not an employee of the recipient who provides services to the recipient if (a) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the *leasing organization*), (b) such person has performed such services for the recipient (or the recipient and related persons) on a substantially full-time basis for a period of at least one year, and (c) such services are performed under primary direction or control by the recipient.

Background: A fully insured group health plan denied a claim because the participant was a leased employee and not a common law employee. The participant sought relief as a state law matter. The court held that the matter was a routine benefit denial where the reason for denial was ineligibility. This is, state law relief was not available. ERISA's language regarding who is an employee was litigated – "An employee is one employed by an employer". The Supreme Court applied the common law determinants and found that insurance agents can be employees if facts and circumstances so indicate. The employer sought to reclassify employees from common law to leased employees so as to avoid the cost of benefits. The terms of the plan remained constant and the habits of the workers remained constant. Was this an ERISA interference infraction? The Court held that it was not. The employer that denied plan eligibility to leased employees was not discriminatory because it had every right to limit plan eligibility so long as it did not discriminate.