

# Seventh Circuit Affirms Discretion Over Who Gets Severance Benefits

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A recent Seventh Circuit decision affirms the principle that an ERISA severance plan can reserve to the employer discretion over who is eligible for severance benefits. The case is *Carlson v. Northrop Grumman Severance Plan*, No. 22-1764, \_\_ F.4th \_\_, 2023 WL 3299703 (7th Cir. May 8, 2023).

The case involved former Northrop Grumman employees who were laid off in 2012 and claimed a right to severance under Northrop Grumman's severance plan. But the plan said an employee was not eligible unless they received a memo from a Vice President of Human Resources notifying them of their severance eligibility. The employees at issue did not receive an eligibility memo.

The employees argued that the requirement to receive an eligibility memo was merely ministerial and should be disregarded. The Seventh Circuit (and the district court before it) disagreed, holding that ERISA allows a severance plan to give the employer discretion over who will receive severance benefits. The court reasoned that the decision of who will be eligible for severance benefits is a design decision, which ERISA does not regulate. An allegation that the employer had changed its approach to eligibility over time did not change the court's conclusion: discretion over plan design need not be exercised consistently. (Although ERISA allows flexibility, discretion is not completely unlimited. Other federal laws, such as Title VII of the Civil Rights Act and the Age Discrimination in Employment Act, continue to apply. Those laws were not at issue in this case.)

**Proskauer's Perspective**

Employers thinking about whether to establish a severance plan often hesitate because they do not want to commit in advance to offering severance or a particular level of benefits. The Seventh Circuit's decision affirms that ERISA is not so restrictive—which means that employers may take advantage of ERISA's protections, such as preemption of state laws and a deferential standard of review (if compliant claims procedures are followed), while still reserving discretion over eligibility.

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