



News & Types: Employment, Labor & Benefits Update

# Board Resolution Did Not Override Employee Handbook Requirements

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Recently, the United States Court of Appeals for the Fourth Circuit vacated a district court's grant of partial summary judgment when it found that a board resolution was insufficient to terminate an ERISA severance plan contained in the company's employee handbook. First, the Fourth Circuit noted that employee benefit plans subject to ERISA must be established via a written instrument, provide a procedure for amending the plan, and identify those individuals with the authority to make plan amendments. Then, the Fourth Circuit noted that the employee handbook (1) gave the company the power to "alter or eliminate handbook provisions," and (2) provided the procedure for amending the employee handbook: "in writing by the Human Resources department." In short, because the company did not follow the employee handbook's procedures for terminating the severance plan, the Fourth Circuit held that the district court erred in finding that the company was entitled to summary judgment on the issue of whether the severance plan was eliminated. *Messer et. al. v. Bristol Compressors Int'l, LLC et. al.*, No. 21-2363 (4th Cir. April 3, 2023; unpub.).

Bristol Compressors International, LLC ("BCI") was implementing a plant closing. BCI's employee handbook contained a severance plan and provided that "[n]othing in this handbook is meant to create an employment contract and nothing in this handbook may be modified or amended except in writing by the Human Resources department. The Company reserves the right to modify, change, or eliminate provisions in this handbook."

On July 27, 2018, prior to commencing the plant closing, the Board signed a written consent resolving that the Board "unanimously approves of and authorizes the termination of the Company's severance plan as described in Section 7.5 of the Company's employee handbook, effective as of July 27, 2018, and the deletion of the corresponding provisions in Section 7.5 of the company's employee handbook effective as of July 27, 2018." Faced with a plant closing and no severance plan, a group of former BCI employees brought the underlying lawsuit.

The Fourth Circuit's opinion serves as a reminder of the importance of procedural compliance with employee handbook provisions, especially when benefits are being modified, changed, or eliminated. Should you have any questions about the decision or your company's employee handbook, please contact me or your relationship attorney.