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MDC Rests. v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 76 (Oct. 27, 2016)

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MDC Rests. v. Eighth Jud. Dist. Ct., 132 Nev. Adv. Op. 76 (Oct. 27, 2016)[1]

CONSTITUTIONAL LAW: STATUTORY INTERPRETATION

Summary

To "provide" health benefits under the Minimum Wage Amendment, an employer need only offer to employees (rather than enroll them in) a qualifying health benefit plan. Tips are not included in an employee's gross taxable income for calculating maximum health benefit plan premiums.

Background

Following the Nevada Constitution's Minimum Wage Amendment (MWA) in 2006, the base wage an employer may pay its employee varies depending on whether that employer provides health benefits.[2] Subsequently, disputes developed about the meaning of "provide" and about whether tips are included within an employee's gross taxable income. These disputes (consolidated in this opinion) were submitted to the Court via writ petition, direct appeal, and certified question.

Issue one: in agreement with the MWA, a 2007 Office of the Labor Commissioner regulation stated that the employer must offer a health insurance plan.[3] The regulation elaborates that the employer must make the health benefit plan available to the employee.

Issue two: the MWA states that the employer must provide health benefits at no higher cost than ten percent of that employee's gross taxable income received from the employer.[4] Contrarily, the Labor Commissioner's regulation states that the ten percent includes tips or other compensation required under the federal income tax rules.[5]

Discussion

Whether employers must merely offer to employees or actually enroll employees in health benefit plans to compensate employees at the lower-tier wage rate

Plain Language

The MWA's plain language shows that the term "provide" means "offer" or "make available," not "enroll." When read "as a whole,"[6] Section 16(A): (1) states the minimum wage exception;[7] (2) treats "provides" and "offer" as synonyms; (3) defines "offer" as "make available;" and thus, (4) defines "provides" as "make available." Accordingly, under the MWA,

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[1] By Alysa Grimes.
[2] NEV. CONST. art 15, § 16(A).
[3] NEV. ADMIN. CODE § 608.102(1) (2016).
[4] NEV. CONST. art. 15 § 16(A).
[5] NEV. ADMIN. CODE § 608.104(2) (2016).
[6] S. Nev. Homebuilders Ass'n v. Clark Cty., 121 Nev. 446, 449, 117 P.3d 171, 173 (2005).
[7] NEV. CONST. art. 15 § 16(A) ("[I]f the employer provides health benefits, then the employer may pay the lower-tier minimum wage.").

an employer need only make health benefits available to the employee in order to pay the lower minimum wage.

Opposing parties argue that the Section's third sentence[8] describes the type and cost of qualifying health benefit plans. That point, however, does not address the MWA's use of "offering" and "making…available" to describe the minimum wage exception requirements. Further, the opposing parties' insistence that "provide" within the MWA means "enroll" assumes that an employee's enrollment in a health benefit program is necessary when it is not. The additional suggestion that the Court look to outside sources to define "provide" is redundant because the definition is "plainly presented" within the provision.

Purpose and Policy

Defining "provide" under the MWA as "offer" rather than "enroll" does not contravene the amendment's intended policy benefits. The MWA's purpose is to ensure that Nevadan "workers…receive fair paychecks that allow them and their families to live above the poverty line."[9] To effectuate that purpose, the MWA requires employers to either offer health benefits or pay a higher minimum wage. That the employee must take the initiative to enroll themselves in the offered health benefit plan does not erase the MWA's intended policy benefits.

Whether employee tips are counted toward income for purposes of the 10-percent cap on premiums

Employee tips are not counted toward total income when calculating the ten-percent cap on health benefit costs. Opposing parties argue that "taxable income" as used in federal income tax law should be applied. The MWA, however, qualifies its use of term by stating that the ten percent should come from the "employee's gross taxable income *from the employer*" (emphasis added.).[10] The Amendment also states that tips may not be included as part of the wage rates required by employers.[11] Therefore, the MWA plainly states that tips are not to be included within the employee's total income.

Retroactivity

The MWA applies retroactively from its inception date. The court's three-part test[12] to determine retroactivity first asks: does the decision establish a new principle of law through an overruled precedent or decision of first impression? If not, the analysis ends, and the decision applies retroactively.[13]

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[8] NEV. CONST. art. 15, § 16(A) ("Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee…").

[9] NEV. BALLOT QUESTIONS, Nev. Sec'y of State, Question No. 6, § 2(6) (2006).

[10] NEV. CONST. art 15, § 16(A).

[11] *Id.* ("[t]ips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.").

[12] The test was established by, Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971) (overruled in part by Harper v. Va. Dep't of Taxation, 609 U.S. 86 (1993). The Nevada Supreme Court applied the test in, Breithaupt v. USAA Prop. & Cas. Ins. Co., 110 Nev. 31, 35, 867 P.2d 402, 405 (1994).

[13] *Chevron*, 404 U.S. at 106.

As applied to how the MWA defines "provide," there is no new principle of law. The Court's holding that "provide" means simply "to offer" is consistent with both the Labor Commissioner's regulation and the MWA's plain language.

Next, as applied to whether tips are included in the employee's gross income, the Court did not overrule any past precedent or decide an issue of first impression. While the Labor Commissioner's regulations are at odds with the MWA, the Nevada Constitution always wins over inconsistent regulations.[14]

Conclusion

The Court directed the district court to vacate its partial summary judgment order in *MDC Restaurants, LLC v. Eighth Judicial District Court* and to hold further proceedings in accordance with this opinion. Additionally, in the *State, Office of the Labor Commissioner v. Hancock* appeal, the Court affirmed the district court's decision that tips are not included in an employee's gross taxable income, reversed the district court's decision that an employer must enroll employees in a health plan to take advantage of the lower minimum wage exception, held that this decision is retroactive, and, finally, remanded the case for further proceedings.

[14] We the People Nev. V. Miller, 124 Nev. 874, 890, 192 P.3d 1166, 1177 (2008).