IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANCES LANEY, Plaintiff, v. INDEPENDENCE BLUE CROSS, BROADSPIRE SERVICES INC., and INDEPENDENCE FAMILY OF COMPANIES SHORT TERM DISABILITY PLAN, Defendants.	Civil Action No. 04-1822

MEMORANDUM/ORDER

Arising from an employment relationship with Independence Blue Cross ("IBC"), Frances Laney has filed a civil action complaint in which she claims that she was entitled to short-term disability benefits pursuant to IBC's Short-Term Disability Benefit Program ("Program") as well as leave under the Family Medical Leave Act ("FMLA" or "Act"), 29 U.S.C. § 2601 *et seq.* In bringing these claims, Laney asserts in her complaint that this court "has subject-matter jurisdiction to hear her claims pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B) and §

1132(a)(3)." [Laney Complaint at 2.] Though unstated by Laney in her complaint, this court would also have subject-matter jurisdiction to entertain any claims brought under the FMLA. IBC has now moved for summary judgment pursuant to Federal Rule of Civil Procedure 56. Because, however, Laney's claims do not fall within the ambit of either federal provision, the court will dismiss this action, *sua sponte*, for want of subject-matter jurisdiction.

Facts:

The undisputed facts are as follows. Frances Laney was hired by IBC in 1985 as a customer service representative and remained with the corporation until 1996, when she left the company to explore other employment opportunities. Later that same year, Laney returned to IBC and was on the payroll there until May 1, 2002, when IBC informed her by letter that IBC construed a work absence as Laney's "voluntary resignation."

During her tenure with IBC, Laney experienced a number of health problems that included, *inter alia*, progressive rheumatoid arthritis, fibromyalgia, and cervical spondylosis. When Laney believed that her physical ailments precluded her from fulfilling her work duties at IBC, she would make a claim for benefits made available to her under the provisions of IBC's Program. Sonia Alcoba, a Disability Administration Representative for IBC, described the Program in her declaration as a "payroll practice whereby IBC makes payments to those employees qualified for short-term disability

benefits out of [IBC's] general assets[.]" [Dec. of Sonia Alcoba]

Employees each receive an information packet that describes how the Program is administered.[1] Employees are eligible and considered full-time when they work at least 37.5 hours a week. Covered disabilities include those physical or mental conditions that cause an employee "to be unable to perform the essential job functions." Additionally, the disability being asserted under the Program must be non-work related, and the existence of the disability must be supported by a "qualified treating physician" or a relevant specialist.

Those individuals that IBC (by way of its administrator, Broadspires) deems disabled and otherwise qualified to receive benefits under the Program are given benefits that are keyed to the employee's base salary. How long one is eligible for benefits under the Program is set by one's tenure at IBC, but 180 calendar days is the maximum duration anyone may receive benefits under the Program. Moreover, benefits are terminated (1) should the employee no longer be deemed disabled by the administrator, (2) the employee dies, (3) the employee fails to provide "written medical documentation" of the disability that is satisfactory to the administrator, (4) the employee refuses an examination by a physician when such an examination is required by the administrator, (5) the employee refuses required medical treatment, or (6) the employee refuses to return to work in a

[1] Defendants provide the 2002 packet, which describes the IBC Program as it would have operated with respect to Laney's 2002 benefit claims.

"modified capacity" as identified by a qualified physician.[2] Finally, the Program does not contemplate – nor does Laney assert – that employees are charged anything for participation in the plan. [2002 IBC Program Provisions]

Laney applied for benefits under the Program on five occasions. Laney was granted Program benefits in the years 1998, 1999, 2000, and 2001. In each of those calendar years, she participated under the Program for between five and six months. On March 25, 2002, Laney again applied for Program benefits. On that same day, she also applied for leave under the FMLA. Three days later, she was denied FMLA benefits because she had not accrued the number of work hours required for FMLA eligibility. On April 25, 2002, Laney's application for Program benefits was also denied after a Program administrator concluded that Laney was not so disabled as to preclude her from working.

Because her application for Program benefits had been denied, IBC attempted to communicate to Laney that she needed to return to work on April 29, 2002.[3] She did not return to work on April 29, 2002, and a letter dated May 1, 2002 was sent to Laney informing her that IBC accepted her constructive resignation when she failed to report to work on April 29, 2002.

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[2] Decisions of the Program administrator may be appealed.

[3] Whether IBC successfully communicated this denial to Laney is disputed, but whether or not Laney received this denial is not material to the resolution of this court's jurisdiction.

Discussion:

The Third Circuit has explained that "[i]n order for the federal courts to have jurisdiction, plaintiff's complaint must show that the case arises under federal law." *New Jersey State AFL-CIO v. New Jersey*, 747 F. 2d 891, 892 (3d Cir. 1984). "A claim 'arises under' federal law only if '[a] right or immunity created by the Constitution or laws of the United States [is] an element, and an essential one, of the plaintiff's cause of action.'" *Id.* (quoting *Franchise Tax Board v. Constr. Laborers Vacation Trust*, 463 U.S. 1 (1983)). Unlike other defenses, the existence of subject-matter jurisdiction is "non-waivable," and "courts have an independent obligation to satisfy themselves of jurisdiction if it is in doubt." *Nesbit v. Gears Unlimited, Inc*., 347 F.3d 72, 76-77 (3d Cir. 2003) (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 278 (1977)). Accordingly, a court may "raise *sua sponte* subject-matter jurisdiction concerns." *Id.*

Finally, in reviewing whether or not jurisdiction exists, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977); *see also Gould Electronics, Inc. v. United States*, 220 F.3d 169, 178 (3d Cir. 2000).[4] Moreover, the plaintiff bears the burden of proving that jurisdiction exists. *Mortensen*,

[4] Though a District Court may look to disputed material facts in assessing the existence of jurisdiction, the relevant facts relied upon in this court's jurisdictional determination are not in dispute.

549 F.2d at 891. For the reasons given below, the plaintiff has not met this jurisdictional burden.

A. Subject-Matter Jurisdiction Under ERISA

The complaint asserts subject-matter jurisdiction pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B) and § 1132(a)(3). ERISA regulates "employee welfare benefit plans," which include plans that provide employees "benefits in the event of sickness, accident, [or] disability." 29 U.S.C. § 1002(1). ERISA also broadly preempts state laws relating to any employee benefit plan. 29 U.S.C. § 1144(a). Within this context, 29 U.S.C. § 1132(a)(1)(B) empowers an ERISA participant or beneficiary to bring a civil action "to recover benefits due to him under the terms of his plan, to enforce the rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan[.]" 29 U.S.C. § 1132(a)(3) provides that an action may also be brought "by a[n] [ERISA] participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."

Though ERISA broadly regulates "employee welfare benefits plans" to include plans that provide benefits in the event of disability, the Secretary of Labor has promulgated a regulation that excludes certain "payroll practices" from the application of

ERISA. 29 C.F.R. § 2510.3-1(b)(2) provides that an "employee benefit welfare plan" shall not include "[p]ayment of an [1] employee's normal compensation, [2] out of the employer's general assets, [3] on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons[.]"

The Program administered by IBC fits squarely within this exception to ERISA. In accordance with § 2510.3-1(b)(2)'s first prong, the Program dictates that qualifying employees will receive their base salary for the period of time that they are unable to work due to the disability. Second, IBC has provided an uncontested declaration attesting to the fact that payouts from the Program come out of IBC's general assets, *see* Dec. of Sonia Alcoba, which corresponds to the second regulatory requirement. Finally, payments made pursuant to the Program are on "account of periods of time during which the employee is physically or mentally unable to perform his or her duties." Thus, § 2510.3-1(b)(2) plainly excepts the Program from ERISA coverage.[5]

Because § 2510.3-1(b)(2) excludes the Program from ERISA's reach, Laney can only argue that the Secretary of Labor has unreasonably circumscribed ERISA's

[5] Laney states in her complaint that "[t]he Independence Blue Cross Family of Companies Short-Term Disability Plan covers employees of multiple employers. The pay-roll practice exemption does not apply to multiple employer plans." Laney does not, however, point to any evidence that IBC's Program, administered by Broadspire, somehow "applies to multiple employers." Even if Laney has presented evidence to support this factual claim, Laney has failed to point to – and this court has discovered no – case law or regulatory authority that supports her legal submission.

coverage. This argument, however, has been rejected by the Supreme Court and all the circuits that have addressed the issue. *See, e.g.*, *Massachusetts v. Morash*, 490 U.S. 107, 120-21 (1989) ("It is sufficient for this case that the Secretary's determination that a single employer's administration of a vacation pay policy from its general assets does not possess the characteristics of a welfare benefit plan constitutes a reasonable construction of the statute."); *Stern v. Int'l Bus. Mach. Co.*, 326 F.3d 1367, 1372 (11th Cir. 2003) (noting that "[e]very decision to interpret the payroll practices regulations since *Morash* supports the application of § 2510.3-1(b)" to programs that fall within the exceptions outlined in that regulation); *Alaska Airlines, Inc. v. Oregon Bureau of Labor*, 122 F.3d 812, 815 (9th Cir. 1997) (holding that an employer's payment of sick leave to its employees, out of the general assets of the corporation, constituted an exempted "payroll practice" rather than an employee welfare benefit plan covered by ERISA); *McMahon v. Digital Equip. Corp*., 162 F.3d 28, 36 (1st Cir. 1998) (noting that a program that pays an employee's salary while he is disabled would not be an ERISA plan when the employer "pays occasional, temporary benefits from its general assets," because "there is no benefits fund to abuse or mismanage and no special risk of loss or nonpayment of benefits"); *Capriccioso v. Henry Ford Health Sys*., 225 F.3d 658, 2000 WL 1033030, at *2 (6th Cir. 2000) (unpublished) (determining that a program that paid full salary to disabled employees was a payroll practice because the salary was paid out of the employer's general assets). In line with *Morash* and the other circuits facing this

question, this court concludes that plans such as IBC's Program have been properly excepted from ERISA coverage under 29 C.F.R. § 2510.3-1(b)(2).

A consequence of the Program's exclusion from ERISA coverage is that this court has no subject-matter jurisdiction to contemplate the substance of Laney's claims made pursuant to IBC's distribution of employee benefits under its Program. The Third Circuit, in *Matinchek v. John Alden Life Ins. Co.*, 93 F.3d 96 (3d Cir. 1996), held that a District Court has no subject-matter jurisdiction to adjudicate claims based on an employee welfare benefit plan that does not come within the scope of ERISA. The *Matinchek* court was charged with reviewing a District Court decision granting summary judgment in favor of an insured who brought a claim pursuant to ERISA seeking to recover benefits under a health insurance policy. The court held that because ERISA did not govern the employee welfare benefit plan at issue, "the district court incorrectly determined it had federal subject-matter jurisdiction based on Matinchek's ERISA claims." *Id*. at 97. Therefore, the court vacated the District Court's judgment and remanded the case "with instructions to dismiss the case for lack of subject-matter jurisdiction." *Id*.; *see also Peacock v. Thomas*, 516 U.S. 349, 354 (1996) (noting that the petitioner could invoke the jurisdiction of the federal courts only by "alleging a violation of an ERISA provision or . . . plan"). Accordingly, this court will dismiss those claims related to IBC's Program for want of subject-matter jurisdiction.

B. Subject-Matter Jurisdiction Under FMLA

Laney's complaint does not specifically assert jurisdiction under the FMLA, but she does allege that IBC violated a fiduciary duty owed her in its administration of the FMLA. The purpose of the FMLA is to balance the demands of the workplace with the needs of employees to take leave for eligible medical conditions and compelling family reasons. *See* 29 U.S.C. § 2601(b). Employers who violate the Act are liable to the injured employee for compensatory damages, back pay, and equitable relief. *See* 29 U.S.C. § 2617(a)(1). To be an employee eligible for relief under the FMLA one must have been employed by the employer for at least twelve months and have had at least 1,250 hours of service with that employer during the previous twelve months. 29 U.S.C. § 2611(2)(A).

Laney applied for FMLA leave on March 18, 2002. IBC asserts, and Laney does not dispute, that Laney was not an eligible employee under the FLMA because she had not worked the requisite 1250 hours when she filed her application. On March 28, 2002, Laney was informed that she had only worked a total of 1040 hours in the previous twelve months and that, consequently, her request for FMLA leave would be denied. In reaching this total for hours worked, the claims administrators did not include the months in which Laney was on disability leave.

By the FMLA's clear language, employees who do not meet the requirements outlined at 29 U.S.C. § 2611 are not eligible for FMLA relief. Laney does not dispute

either IBC's calculation or methodology. Moreover, excluding paid or unpaid leave from calculating hours of service accords with the regulations promulgated in connection with 29 U.S.C. § 2611. *See Robbins v. Bureau of Nat'l Affairs, Inc*., 896 F. Supp. 18, 20-21 (D.D.C. 1995) (describing the relevant regulatory landscape, which shows that paid leave and unpaid leave are not considered hours of service). Consequently, this court also does not have jurisdiction to entertain Laney's FMLA claims.

Conclusion:

Because this court can only exercise jurisdiction insofar as Laney can show that a federal question properly exists pursuant to either ERISA or the FMLA, Laney's failure to show that her claims fall within either statutory provision requires that this action be dismissed for lack of subject-matter jurisdiction.[6] Accordingly, IBC's motion for summary judgment is hereby **DENIED** and this action is **DISMISSED** with prejudice.

BY THE COURT:

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Louis H. Pollak, J.

[6] Alternatively, even were the court to conclude that it possessed subject-matter jurisdiction over this matter, dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for "fail[ing] to state a claim upon which relief can be granted" would be the consequence of Laney's inability to show that she possesses a federal cause of action under either ERISA or the FMLA.