Employee Retirement Income Security Act (ERISA)

In This Chapter

ANALYSIS

OVERVIEW

Employer-sponsored welfare benefit plans, including health care plans, generally are subject to the requirements of the Employee Retirement Income Security Act of 1974 ([PL 93-406] P.L. 93-406), as amended. ERISA was enacted to ensure that employee-participants and their beneficiaries receive adequate information about the plans in which they participate and their benefits and rights under those plans; as well as to establish standards of conduct for fiduciaries and other persons responsible for managing employee benefit plans and funds.

In general, a health plan is subject to ERISA if it is an "employee welfare benefit plan" - a plan established or maintained for employees by either an employer, an employee organization representing the covered employees, or both an employer and an employee organization. ERISA does not apply, however, to government plans; church plans; plans maintained to comply with state worker's compensation, unemployment compensation, or disability insurance laws; and plans maintained outside the United States primarily for nonresident aliens.

All plans subject to ERISA must be set forth in writing and maintained for the exclusive purpose of providing plan benefits to employee-participants (and their beneficiaries) and defraying reasonable plan expenses. A covered health care plan also is subject to additional rules under ERISA, including requirements regarding reporting and disclosure, fiduciary responsibility, and administration and enforcement. Some of these requirements also are requirements under the Internal Revenue Code.

While the Department of Labor and Internal Revenue Service have joint responsibility over the enforcement of ERISA - particularly those portions of ERISA that overlap the Internal Revenue Code - DOL has primary enforcement responsibility over the provisions affecting health plans.

Regarding the enforcement provisions of ERISA, the law provides that employees, participants, and beneficiaries may file a civil suit or request DOL assistance where they believe their rights have been violated. An employee, participant, or beneficiary might file a claim to recover benefits, to clarify the individual's rights to benefits, or to seek relief on account of a violation of ERISA's fiduciary standards. Criminal penalties also are possible where a fiduciary or other person involved with a plan intentionally violates ERISA's reporting and disclosure rules.

This chapter discusses the provisions of ERISA that apply to health plans. The law's application to pension and retirement plans is discussed separately in Section 343. Reproductions of the federal forms and notices referenced in this chapter are provided in the GOVERNMENT
ERISA provides standards of conduct for establishing and administering employee benefit plans, including both pension and welfare plans. Its standards therefore apply to a health plan only to the extent that the plan is an "employee welfare benefit plan." To qualify as an employee welfare benefit plan, the programs must (1) provide benefits such as medical, surgical, or hospital care, disability payments, life insurance, severance pay, and vacations (all of which are not compensation arrangements); and (2) be established or maintained for employees by either their employer, an employee organization representing the covered employees, or both an employer and an employee organization. Exempt from ERISA are plans:

- Maintained for employees of a local, state, or federal governmental agency;
- Maintained to cover employees of a church or church-related entity;
- Maintained to comply with state workers' compensation, unemployment compensation, or disability insurance laws; and
- Maintained outside the United States primarily for nonresident aliens.

While ERISA limits its coverage to plans that cover employees involved in activities that affect commerce, employers should note that virtually all industries or activities are considered to affect commerce for purposes of ERISA coverage. ([29 USC 1002] 29 USC §§ 1002, 1003)

Written Plan and Trust Requirements

Under ERISA, a health plan must be set forth in writing in at least one document. The written document must set forth the terms of the plan and provide for one or more named fiduciaries who are responsible for the administration and management of the plan. In addition, the plan must include provisions relating to benefit funding, the allocation of plan administration responsibilities, plan amendments, and benefit distributions. This "written plan" requirement is intended to ensure that the plan is administered in a fair, consistent manner. It also provides a written set of guidelines by which actual or potential participants may ensure that the plan is administered in accordance with its terms.

Subject to several exceptions, ERISA requires that plan assets be held in trust. A trust is not required, however, if plan assets consist only of insurance or annuity contracts issued by a licensed insurance company. An employer also may be able to avoid using a trust where the benefits are funded exclusively by the employer on a 'pay-as-you-go' basis. The trust requirement therefore is intended to prevent the employer from commingling the plan's assets with its own property and from using any participant contributions under the plan for its own use. In addition,
the trust requirement ensures that contributions are promptly paid into the plan so that they may be available to provide benefits.

The plan documents may include a separate trust document or may incorporate the necessary provisions to establish the trust. The trust provisions must name one or more individuals or entities as the plan's "trustee" responsible for managing and controlling the plan's assets. Because actions to pre-fund the health care benefit obligation raise certain tax issues under the Code, employers typically will not fund the benefits much before the date of payment. Consequently, the plan trustee generally has little investment responsibility. In most cases, the trust serves as a pass-through vehicle for paying any benefit claims or any applicable insurance premiums. If an employer does pre-fund plan benefits, an investment manager or committee might assume responsibility for the plan's investments and direct the trustee regarding those investments.

The trust rules apply to any contributions made by employees, retirees, former employees, and employee dependents. Health care coverage mandated by the Consolidated Omnibus Budget Reconciliation Act or a qualified medical support order (see the related chapters in this section) also is subject to ERISA's trust requirements. However, DOL may exempt a specific plan from the trust requirements if the employer can demonstrate that the employee contributions consistently are applied only to reimburse the employer for benefit expenses already incurred under the plan. ([29 USC 1101] 29 USC §§ 1101, [29 USC 1102] 1102, [29 USC 1103] 1103)