



ERISA Guide Questions and Answers

1. What is ERISA?

The Employee Retirement Income Security Act of 1974 (ERISA) is a Federal Act that provides significant protection for participants and their beneficiaries in Employee Welfare Benefit Plans.

2. What is an Employee Welfare Benefit Plan for purposes of ERISA?

An ERISA Employee Welfare Benefit Plan means any plan, fund, or program of benefits established or maintained by an employer that provides for its participants or their beneficiaries, through insurance, or otherwise, medical, surgical, or hospital care or benefits in the event of sickness, accident, disability, death or unemployment, other than pensions on retirement or death.

3. Who administers and enforces the provisions of ERISA?

The U.S. Department of Labor, through the Employee Benefits Security Administration (“EBSA”), is responsible for enforcing the fiduciary, reporting and disclosure provisions of Title I of ERISA. The goal of Title I of ERISA is to protect the interests of participants and their beneficiaries.

4. How does ERISA regulate the design of an Employee Welfare Benefit Plan?

ERISA provides that every employee welfare benefit plan shall be established and maintained pursuant to a written instrument. This instrument, or Master Plan Document, shall provide for a named fiduciary or Plan Administrator. The Plan must inform participants and their beneficiaries of the basis for paying benefits and the procedure for handling claims, denials and appeals of denials. ERISA does not regulate the actual benefits to be provided.

5. What is a Plan Administrator?

The Plan Administrator of Plan Sponsor is the person, committee, or organization designated by the Master Plan Document to administer the plan and will generally be the Employer. ERISA requires the Plan Administrator to discharge its duties according to the prudent man rule and solely in the interest of the participants and beneficiaries of the Plan.

6. What are the reporting and disclosure requirements?

ERISA fully exempts employee welfare benefit plans from participation, vesting and funding provisions (Title I) and plan termination insurance provisions (Title IV). Plans with fewer than 100 participants at the start of the plan year are exempted from most of the reporting and disclosure provisions of ERISA if they meet the following conditions: 1) Plan benefits are paid as needed from the general assets of the employer; or 2) benefits are provided exclusively through insurance contracts or policies issued by an insurance company; or 3) both. The only reporting requirement is that the administrator must provide each covered participant and each beneficiary with a Summary Plan Description (SPD).

7. What is A Summary Plan Description (SPD)?

The SPD is a written summary of the benefits provided under the Master Plan Document, plus a statement of the participant's rights under ERISA. It must be written in a manner calculated to be understood by the average plan participant. Descriptions of exceptions, limitations, and other restrictions of plan benefits cannot be minimized. If 25% of the plan participants are literate only in the same non-English language, special assistance must be provided.

8. When is the SPD to be distributed to participants?

Generally, no later than 120 days after the plan is established; thereafter, 90 days after an individual becomes a participant.

9. What about SPD updates and notice of plan changes?

Participants must be given an update summarizing material modifications no later than 210 days after the close of the plan year in which the modification or changes were adopted, regardless of when they become effective. A fully revised SPD incorporating such changes must be issued no later than 210 days after the end of the fifth plan year from the distribution of the prior SPD. If no changes have been made since the prior SPD was distributed, the Plan Administrator may wait and re-issue the SPD after ten years.

10. What Civil penalties apply?

ERISA imposes a \$100 per day penalty on a Plan Administrator who fails, within 30 days, to comply with a participant's request to obtain a copy of the SPD. In addition, ERISA reporting and disclosure requirements have serious penalties for non-compliance. Failure to timely file any required annual reports with the Internal Revenue Service can result in a penalty of \$200 a day and willful violations may result in criminal penalties. Small employers (those having fewer than 100 participants) are exempt from this annual reporting requirement.

11. What about civil lawsuits for plan benefits?

If a benefit claim is denied by the plan administrator, the administrator must provide a timely written explanation to the claimant, giving reasons for the denial of benefits. This explanation must be made in terms that are comprehensible to that type of worker, and the claimant must have at least 60 days to request a full and fair review of the decision. If the plan provides for appeal of denial of benefits to be made (again) to the plan administrator, that is the process which must be followed. Only after the claimant has exhausted this “administrative procedure” can he bring a civil lawsuit to enforce his claim. In almost all cases, the plan administrator should be able to remove any litigation to Federal court.

A denial of benefits by a plan administrator, under an ERISA governed plan, will only be over-turned by a court if the denial was “arbitrary or capricious.” Under this standard, the Federal District Court considers only the evidence available to the plan administrator at the time the denial of benefits was made. A jury trial is not available, and the recovery is generally limited to the benefits offered under the Plan. Attorney fees MAY or MAY NOT be awarded by the court. State courts have concurrent jurisdiction but the ERISA preemption may still be raised.

12. What law governs filing a claim for benefits under an Employee Welfare Benefit Plan?

Generally, ERISA preempts or supersedes any and all state laws insofar as they relate to an employee welfare benefit plan. Therefore, all state mandated insurance coverage, claims practices, claims administration and other services relating to an employee welfare benefit plan are exempt from state laws and regulations and are governed by ERISA. This includes claims under the Texas Deceptive Trade Practices Act.

13. Does ERISA preempt the common law claim of negligence, in the event a Texas non-subscriber gets sued for Negligence by an employee who is hurt on the job? NO!

14. Does ERISA preempt Texas House Bill 2055, as amended by House Bill 369 – The Small Employee Health Insurance Availability Act?

Probably. ERISA will preempt any state law other than any portion which “regulates” the business of insurance. The Texas Department of Insurance is aware of this possible conflict but has declined to seek an Attorney General’s opinion.

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