



ERISA Essentials

March 13th , 2024

*This presentation does not constitute legal advice.
Please consult legal & tax counsel re: specific
guidance for benefit Plan actions based upon the facts
& circumstances of the inquiry.*

Agenda – ERISA Essentials

- ERISA → the 411
- Requirements
 - Plan
 - Fiduciary
 - Reporting



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★ Benefits Compliance



Educate	...stakeholders.
Train	...on fundamental concepts in EB Compliance.
Address	... current events as applied to EB Compliance.
Serve	...as a resource for complex issues.
Provide	...value-enhancing content for employees & clients.



Employee Retirement Income Security Act (ERISA) of 1974 – 50 Year Anniversary

Regulates pension, retirement, and welfare plans

- Title I - regulates employee health & welfare plans
 - Most plans subject to ERISA
 - Church & government plans excepted
 - Amended to include additional regulations





ERISA's Amendments:

COBRA
HIPAA
NMHPA
MHPAEA
WHCRA
ACA



ERISA

Compliance Assistance
Consumer Information on Health Plans
Continuation of Health Coverage (COBRA)
ERISA
Fiduciary Responsibilities
Health Benefits Education
Mental Health Benefits
Newborns' and Mothers' Protections

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

ERISA requires plans to provide participants with [plan information](#) including important information about plan features and funding; provides [fiduciary responsibilities](#) for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; and gives participants the right to sue for benefits and breaches of fiduciary duty.

There have been a number of amendments to ERISA, expanding the protections available to health benefit plan participants and beneficiaries. One important amendment, the [Consolidated Omnibus Budget Reconciliation Act \(COBRA\)](#), provides some workers and their families with the right to continue their health coverage for a limited time after certain events, such as the loss of a job. Another amendment to ERISA is the [Health Insurance Portability and Accountability Act](#) which provides important protections for working Americans and their families who might otherwise suffer discrimination in health coverage based on factors that relate to an individual's health. Other important amendments include the Newborns' and Mothers' Health Protection Act, the Mental Health Parity Act, the Women's Health and Cancer Rights Act, the Affordable Care Act and the Mental

How ERISA Governs Plans



Streamlines regulations via federal preemption



Requires plans to provide plan information to participants



Outlines requirements for protection of plan assets and fiduciary responsibilities



Requires plans to establish a grievance and appeals process for participants and beneficiaries

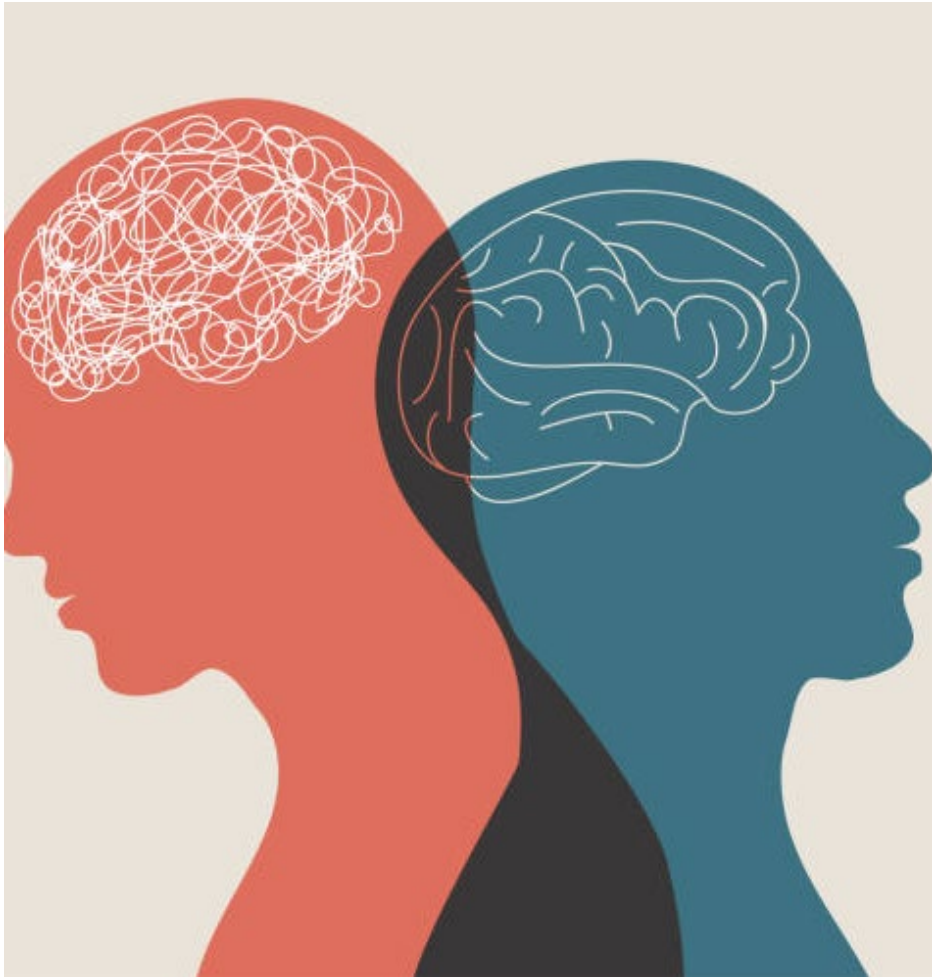


Gives participants the right to sue for benefits and breaches of fiduciary duty

★ What is an ERISA Plan?

- A plan, fund, or program;
- Established or maintained by the employer;
- To provide a benefit* to participants or beneficiaries:

What types of benefits?



- Medical, surgical, or hospital
- Sickness, accidental, disability, death
- Daycare centers
- Scholarship funds
- Prepaid legal services
- Benefits:
 - Unemployment
 - Vacation
 - Apprenticeship or training
 - Holiday/severance
 - Housing assistance

Are there more benefits* subject to ERISA?

- ✓ Accidental D&D
- ✓ Business travel
- ✓ Cancer insurance
- ✓ Death (other than life insurance)
- ✓ Dental
- ✓ Disability (STD or LTD) → payroll practice exc.
- ✓ EAPs (if medical benefits provided)
- ✓ Group Term/Universal Life
- ✓ Health → Medical, FSA, HMSs, HRAs
- ✓ Legal Plans
- ✓ Long-Term Care → nursing care



- ✓ Medicare premium subsidies
- ✓ MEWAs
- ✓ Rx Drug Plans
- ✓ Severance Pay
- ✓ Smoking Cessation Programs →if medical benefits are provided
- ✓ Split-Dollar Life Insurance
- ✓ Vision Plans (insured or uninsured)
- ✓ Wellness Programs (if tied to health plan or offers "medical care")



Red Flags & Exemptions

ARRANGEMENTS ?

- Does include ER name
- EE auto-enrolled for “free”
- ER publication of program
- ER positive judgement
- ER involved in design & structure
- Tied into EE status
- ER is go to for questions/disputes

EXEMPTIONS

- Government & church plans
- State law mandated:
 - Workers comp.
 - Unemployment
 - Disability insurance
- EAPs paid by ER, not insurance
- “Normal” payroll practice
 - Wages, OT pay, sick, vacation, jury duty,
- Onsite facilities for minor illness
- Voluntary EE pays all plans

★ Essential Elements?

- A **written** plan → describes the benefit structure & guides day-to-day operations;
- A **trust** → hold the plan's **assets***;
- A **recordkeeping system** → track contribution & benefit payments, maintain participant & beneficiary information, & accurately prepare **reporting** documents; and
- Documents → **provide plan information to participating employees and government.**

Funded v. Insured – Plan Types

FUNDED → if uses plan assets to provide benefits

UNFUNDED → if provides benefits **solely** from ER's general assets

If ER accepts EE dollars → FUNDED, even if ER keeps \$ in a general account



Funded v. Insured – Plan Types

Technical Release 92-01

- *Exception to holding assets in a trust account.*
- *DOL says excepted **if only** reason for the plan to have a trust is accepting EE \$*

“Exclusive Benefit Rule”

- Plan assets → held for exclusive purpose of providing benefits to plan participants and beneficiaries & defraying reasonable expenses of administering the plan.



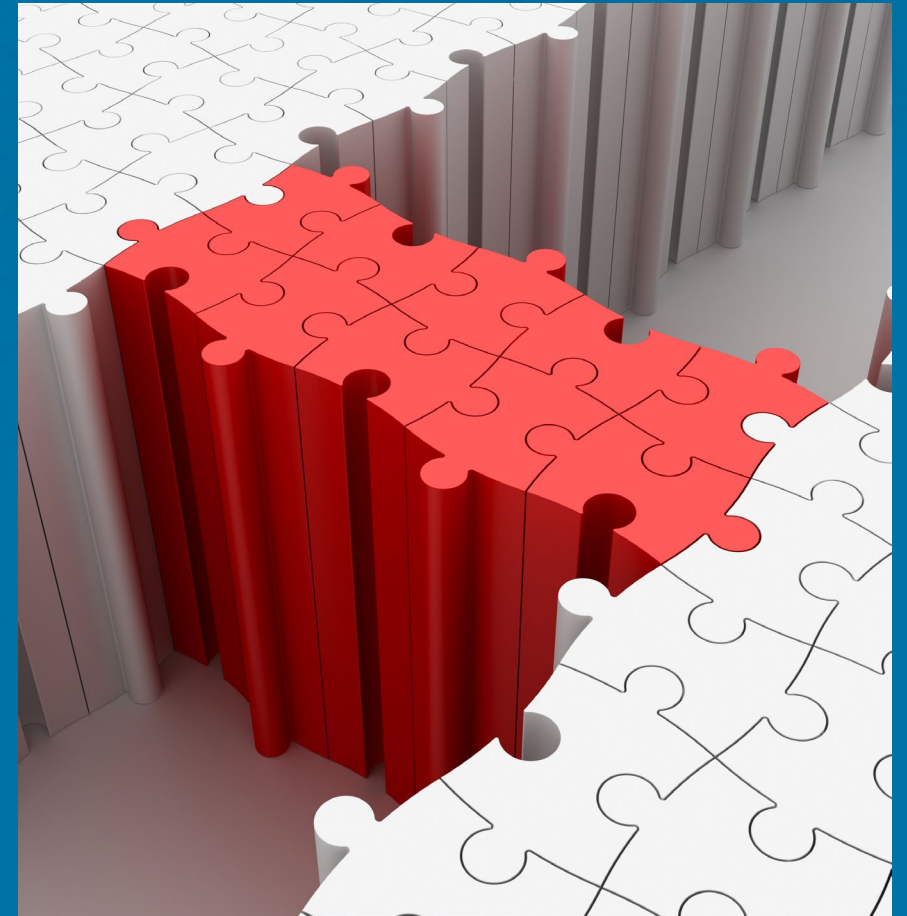
Funded v. Insured – Plan Types

INSURED → if plan benefit claims are paid through insurance policies.

SELF-INSURED → if plan benefit claims are paid directly from plan assets or the employer's general assets

Plans may

- Be part insured & part self-insured
- Use multiple funding methods



Fiduciary

A person using discretion in administering and managing a plan or controlling the plan's assets is a fiduciary to the extent of that discretion or control.

Fiduciary Expectations for Employers*

1. Carry out duties prudently.
2. Follow the plan documents.
3. Hold plan assets in trust.
4. Pay only reasonable plan expenses.
5. Act solely in the interest of plan participants & their beneficiaries.

ERISA Roles & Responsibilities

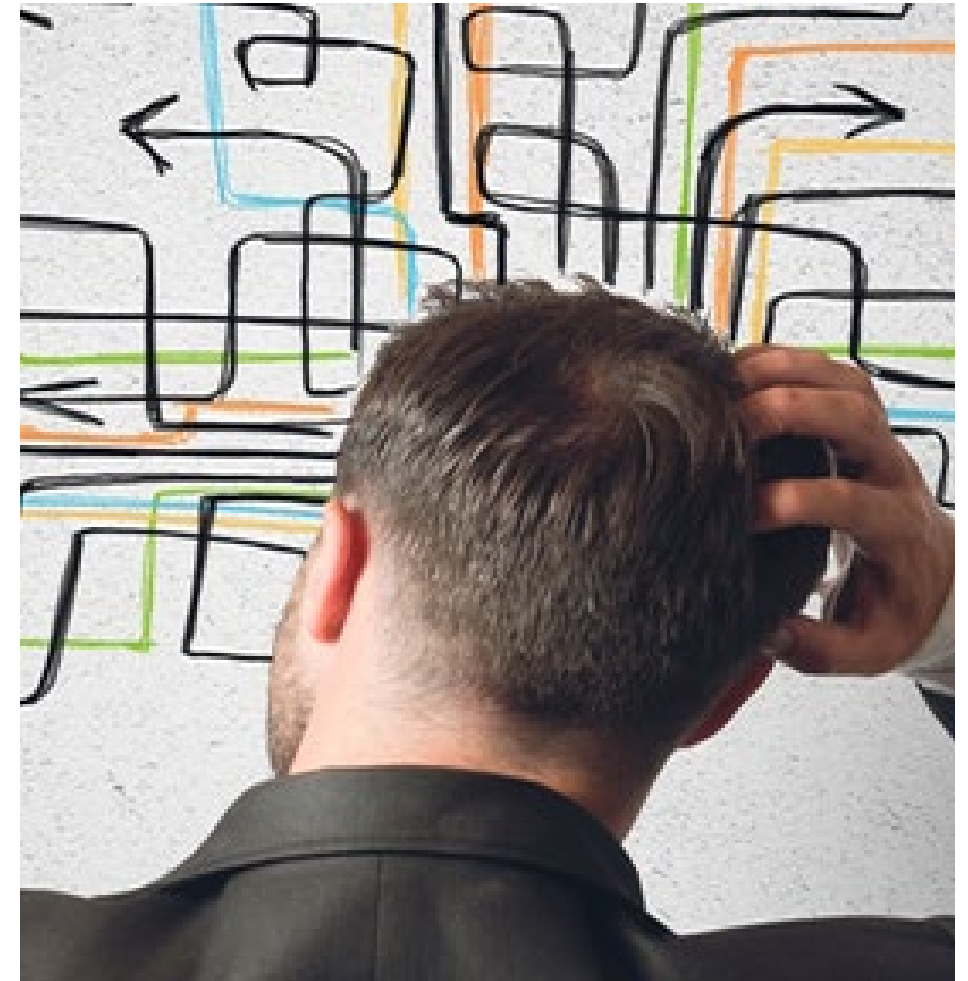
Plan Sponsor → The employer

- Fund, establish, maintain, amend, and end plans

Plan → legal entity

Plan Administrator → Plan Sponsor

- Primary role to administer plan
- Assumes liability for failures



ERISA Roles & Responsibilities

Plan Administrator → Plan Sponsor

- Named in plan document
- Administrative duties:
 - Form 5500 filing
 - Plan disclosures
 - COBRA, HIPAA, QMCSO,
 - Recordkeeping

What about the TPA?

- NOT fiduciary unless specifically named
- Unless they make **final decisions on claims** or **access to accounts with plan assets**



★ Who can penalize a plan?

- ERISA → IRS & DOL can penalize separately for same offense via EBSA
- HIPAA → HHS can penalize via OCR
- CMS levy penalties for MSP

★ Common Plan Failures

- ERISA → MEWAs: to file the Form M-1
 - to furnish SBC to participant
 - to furnish SPD and SAR

★ Common Plan Failures

- CHIPRA → inform employee of coverage opportunity
- COBRA → provide compliant notices
- DOL → provide them with plan data or file forms
- FMLA → willful failure to post general notice

Source: ComplianceDashboard

★ ERISA Criminal & Fiduciary Penalties

Excise taxes and monetary penalties

- Willfully violating reporting requirements → +\$100K
- Knowingly making false statement to prepare reports
- Cohersive interference with participant rights
- Theft or embezzlement from plan

Source: ComplianceDashboard

★ ERISA Criminal & Fiduciary Penalties

Excise taxes and monetary penalties

- Breach of fiduciary duties
 - Penalties up to 20% recovery
 - Personal liability
 - Criminal prosecution.

Source: ComplianceDashboard

2024 ERISA Health Plan Penalties

Provide Plan Docs. to the DOL	\$190 capped at \$1,906 per request
SPD – fail to provide to participants	\$110 per day per employee
COBRA Notice failure	\$110 per day per beneficiary
Form 5500 – fail to file	\$2,670 per day
ACA – reform failures	\$100 per participant per day
SBC – fail to distribute	\$1,406 per participant failure
Form 1095 series – fail to file	\$290 per return
CHIP – fail to notify of benefits	\$141 per participant per day
GINA – fail to comply in plan design	\$137 per participant per day
MEWA – fail to file Form M-1	\$1,942 per day

ERISA Assessment

- Audit programs → verify which are Plans
- Do they have plan documents?
- Can you name fiduciaries?
- Do you have a process to provide reports?
- Where do you go for guidance?

ERISA

1. Requires plan administrators **provide** participants **information** about plan features and funding.
2. Provides fiduciary **responsibilities** for those **managing** plan assets.
3. Requires a **grievance & appeals** process for participants; and
4. Gives participants the right to sue the plan administrator for benefits & **breaches** of fiduciary **duty**.

Plan Document

Every ERISA plan must be established & maintained pursuant to a written instrument or plan document that gives participants the most important facts about their health benefit plan: plan rules, financial information, and documentation on how it operates & is managed.

ERISA Plan Documents

1. Plan Documents -
2. WRAP
3. Summary Plan Description (SPD)
4. Summary of Material Modifications (SMM)
5. Summary of Benefits & Coverage
6. Education Booklets
7. Employer Handbooks/Policies

Thank you!



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