

Determining Whether a Welfare Benefit Arrangement is an ERISA Plan



Determining exactly which plans are ERISA welfare benefit plans is complicated. Even minimal employer involvement, in some situations, has led to a court's finding that an arrangement has created an ERISA plan. Employers looking to provide benefits to employees without originally creating an ERISA-qualified plan should use extreme caution as they may inadvertently create an ERISA plan, subjecting it to ERISA's rules.

An ERISA plan exists if a **plan, fund or program** is **established or maintained** by an **employer, employee organization or both**, for the purpose of **providing specified benefits** to **participants and their beneficiaries**. This checklist, relating to each of these bolded categories, will help guide you in determining if your welfare benefit plan is an ERISA plan.

Plan, Fund or Program

Could a reasonable person:

- Determine what the arrangement's intended benefits are?
- Determine the class of beneficiaries?
- Determine the source of financing for the arrangement?
- Understand how to apply for or receive benefits under the arrangement?

Established or Maintained

- Did the employer intend to create a plan? Did the employers' actions suggest that they decided to extend benefits?
- Is the employer clearly involved in the plan administration?
- Does the arrangement include ongoing administration?
- Is the arrangement an informal practice (payroll deduction), or is a funding mechanism present (ex: funded trust)?
- Is there a written plan document?
- Are employees aware of the plan, and have they relied on its existence?

Employer, Employee Organization or Both

- Is the arrangement offered by an employer or an employee organization?

Providing Specified Benefits:

- Does the arrangement provide participants and beneficiaries with benefits specifically covered by ERISA as a welfare benefit plan? This includes:
 - Medical, surgical or hospital care
 - Benefits for accident, disability, sickness or death
 - Unemployment benefits
 - Vacation benefits
 - Apprenticeship or other training programs
 - Day care centers

- Scholarship funds
 - Prepaid legal services
 - Holiday and severance pay plans
- Does the arrangement cover benefits specifically exempt by ERISA? Under ERISA, welfare benefit plans do not include the following:
- Overtime and other premium pay
 - Sick pay
 - Leave pay
 - On-premises facilities
 - First-aid centers
 - Holiday gifts
 - Sales to employees
 - Hiring halls
 - Remembrance funds
 - Strike funds
 - Industry advancement programs
 - Group insurance programs
 - Unfunded scholarship funds
 - Labor-management cooperation funds
 - Job banks

Participants and their Beneficiaries:

- Do employees receive benefits under the arrangement? Or are the benefits received only by nonemployees? ERISA plans cover employees, former employees, union members and beneficiaries of any of these. A plan that no employees participate in is not an ERISA welfare benefit arrangement.