Identifying an ERISA Plan

Definition: There must be a plan, fund, or program that is established or maintained by an employer for the purpose of providing specifically listed benefits, through the purchase of insurance or otherwise to participans and their beneficiaries.

1 THERE MUST BE A PLAN, FUND, OR PROGRAM

- This means a reasonable person could ascertain:
  1. the intended benefits
  2. a class of beneficiaries
  3. the source of financing
  4. the procedures for receiving benefits
- There must also be a commitment to pay benefits systematically, including an ongoing administrative responsibility or scheme to determine eligibility and calculate benefits.
- A written plan document (or the absence of a document) does not determine whether a plan is covered by ERISA.

2 THAT IS ESTABLISHED OR MAINTAINED BY AN EMPLOYER

- The plan must be part of the employment relationship.
- Self-Insured Plans: If established or maintained by employer.
- Fully Insured Plans: If employer pays insurer to administer the plan (or purchases insurance).

3 FOR THE PURPOSE OF PROVIDING SPECIFICALLY LISTED BENEFITS, THROUGH THE PURCHASE OF INSURANCE OR OTHERWISE

- Medical, surgical, or hospital care
- Benefits in the event of sickness, accident, disability, death, or unemployment
- Vacation benefits
- Apprenticeship or other training programs
- Daycare centers
- Scholarship funds
- Prepaid legal service

4 TO PARTICIPANTS AND THEIR BENEFICIARIES

- Employees or former employees eligible to receive a benefit from an employee benefit plan covering employees or their beneficiaries.
- This may include retirees or COBRA qualified beneficiaries.

Exemptions

- Government Plans (maintained by the government of the U.S., state, or political subdivision)
- Church Plans (maintained by a church or convention or association of churches that is exempt under Code Sec. 501; however, this does not include a plan maintained primarily for the benefit of employees who are employed in connection with unrelated trades or businesses)
- Plans maintained by Indian tribal governments, but only if all of the participants in the plan are employees of the tribal government and their services as employees are in the performance of essential governmental functions (but not in the performance of commercial activities)
- Plans maintained solely to comply with worker's compensation, unemployment compensation, or disability insurance laws
- Plans maintained outside of the U.S. for nonresident aliens
- Payment of wages, unfunded sick pay or income replacement benefits
- Unfunded vacation, holiday, jury duty and similar pay

Process

1. **List All Plans, Funds, or Programs**
   - Include fringe benefits of any type or size, even if informal or unwritten.
2. **Disregard Benefits Not Maintained by an Employer**
   - For example, certain insurance policies paid for entirely by employees. See Voluntary Plans page.
3. **Disregard Benefits Not Listed in ERISA**
   - See Definition page.
4. **Disregard Benefits Not Provided to Employees or Their Beneficiaries**
   - Benefits provided only to persons who are not employees, former employees or their dependents generally are not subject to ERISA.
5. **Disregard Benefits Exempted From ERISA**
   - See Definition Page.
6. **Disregard Benefits Exempted Under DOL Regulations**
   - See Definition page.
7. **List ERISA Benefits**
   - These are the benefits subject to ERISA's compliance obligations.

Voluntary Plans: Voluntary plans are programs that offer employees the opportunity to purchase benefits through the work-place. Examples include disability or disease-specific benefits.

These benefits are not deemed to be "maintained" by an employer and are therefore not subject to ERISA, even though they provide ERISA-type benefits, provided that the plan satisfies the regulatory safe harbor for voluntary plans.

To satisfy the safe harbor, the plan must be an insurance program under which:

1. no contributions are made by an employer;
2. participation in the program is completely voluntary for employees or members;
3. the sole functions of the employer with respect to the program are (without endorsing the program):
   a. to permit the insurer to publicize the program to employees or members;
   b. to collect premiums through payroll deductions or dues check-offs and and remit them to the insurer
4. the employer receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation (excluding any profit) for administrative services actually rendered in connection with payroll deductions or dues check-offs.

The most difficult part of applying this rule is determining whether an employer has endorsed the program. Examples of some employer activities that have been deemed endorsements include:

- Negotiating the terms of coverage
- Associating the employer's name with the plan
- Recommending a plan
- Allowing employees to pay for coverage through a cafeteria plan
- Assisting employees with claims or disputes.

In general, any employer involvement apart from that permitted by the safe harbor should be carefully reviewed.

Examples: These examples assume that the employer pays at least a portion of the cost of the plan or benefit.

Benefits not considered ERISA plans assume that the benefit is "unfunded" (i.e., uninsured and paid from the employer's general assets and not from a fund or trust). Note that any plan that requires or accepts employee contributions will not be considered "unfunded."

Plans That Are Generally Considered to be ERISA Plans

- Business Travel Accident Insurance
- Cancer Insurance
- Day Care Center
- Dental Benefits
- Disability (STD, LTD) insured or funded other than payroll practice
- Disease Specific Coverage
- Drug and Alcohol Treatment Programs
- Employee Assistance Plans that offer medical care (e.g., mental health or substance abuse counseling)
- Executive physicals
- Health Flexible Spending Arrangements (FSAs)
- Health Reimbursement Arrangements (HRAs)
- Flu Shot Programs
- Legal Plans
- Life Insurance
- Mini-Med Plans
- Nurse Help Lines
- On-Site Clinics (if medical care provided beyond first aid)
- Severance Pay Plans
- Vision Plans
- Wellness Plans with biometric screening

Plans That Are Generally NOT Considered to be ERISA Plans

- Accidental Death & Dismemberment
- Adoption Assistance
- Auto Insurance
- Cafeteria Plans (Premium only)
- Commuting Benefits
- Dependent Care Assistance Programs (DCAPs)
- Disability (STD, LTD) funded as payroll practice
- Disability Insurance solely to comply with state law
- Educational Assistance Programs
- Employee Assistance Plans that do not provide medical care (e.g., referral-only programs)
- Exercise or Fitness Center Benefits
- On-Site First Aid Clinics (treatment of work injuries or first aid only)
- Sick Pay Plans
- Training Benefits
- Tuition Reimbursement
- Vacation Pay Plans

When using this list, it's important to also look at the benefits provided by each program. For example, employer sponsored auto insurance may be an ERISA plan if the policy provides for medical payments.

In general, if a plan offers non-ERISA benefits in combination with ERISA benefits, the plan will be subject to ERISA.