

What Are Voluntary Plans, and Are They Subject to ERISA?

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QUESTION: What are “voluntary” employee benefit plans? Are they subject to ERISA?

ANSWER: When most people think of voluntary plans, they think of supplemental insurance coverage offered to employees on a voluntary basis, with employees paying the whole premium. Many such arrangements involve individual policies that are issued to employees who sign up and pay for the coverage. Common examples of such individual policy arrangements include hospital indemnity, cancer, and other disease-specific coverages. With individual policy arrangements, the employer might allow insurance representatives to contact employees at work, explain the offering, and help interested employees sign up for the coverage. In many cases, the insurer sends the employer a bill each month listing the employees who have signed up for the insurance and the monthly premium each employee owes. The employer then collects premiums from the employees through payroll deductions and typically sends one premium check to each insurer. Other voluntary plans may involve group insurance coverage, where the employer signs the insurance contract, but employees participate on a voluntary employee-pay-all basis. Dental insurance is sometimes offered in this manner.

Whether these types of plans are subject to ERISA hinges on the employer’s involvement—coverage available through the workplace is generally subject to ERISA if it is a plan, fund, or program established or maintained by an employer to provide (through the purchase of insurance or otherwise) specifically listed benefits to employees and beneficiaries. But under a DOL regulatory safe harbor, group insurance arrangements that meet specified requirements are exempt from ERISA. Generally, an arrangement falls within the safe harbor if (1) the employer makes no contributions; (2) participation is completely voluntary; (3) the employer’s involvement is limited to permitting the insurer to publicize the program and to collecting and remitting premiums to the insurer, without endorsing the program; and (4) the employer receives no consideration for collecting and remitting premiums, other than reasonable compensation. In the examples above, the first arrangement likely falls within the safe harbor because it appears that the employer’s involvement is limited to the permissible activities under the safe harbor. But signing the group insurance contract, as in the latter example, may constitute employer endorsement that would take the arrangement outside the safe harbor.

Many supplemental insurance arrangements offered at the workplace will constitute voluntary employee-pay-all arrangements that fall within the safe harbor—so long as employer involvement is sufficiently limited. An arrangement that does not satisfy the voluntary plan safe harbor likely will be subject to ERISA and its many compliance obligations, such as filing required Form 5500s.

For more information, see EBIA’s ERISA Compliance manual at Section VII (“Voluntary Plans—When Are They Subject to ERISA?”)

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