

What Is the Employer's Role in a Voluntary Plan Safe Harbor Arrangement?

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QUESTION: What is the employer's role in a voluntary plan safe harbor arrangement?

ANSWER: Certain group insurance arrangements (e.g., supplemental cancer insurance arrangements) that meet specified requirements are exempt from ERISA under a regulatory safe harbor. The plans are known as "voluntary plans" because an arrangement may fall within the safe harbor if the participation is completely voluntary. In addition, for a voluntary plan arrangement to fall within the safe harbor, the employer's role is strictly limited by DOL regulations. Specifically:

- *Cannot Require Participation.* As already mentioned, employee participation must be completely voluntary. For employers, that means they cannot require or coerce employees to participate.
- *No Contributions.* The employer cannot make any contributions to the plan. That means employers cannot make direct payments or reimbursements, or provide any form of financial support.
- *Limited Functions.* The employer's functions are limited to: (1) Permitting the insurer to publicize the program to employees (e.g., allowing presentations or distributing materials, but not actively promoting or recommending the plan); (2) Collecting premiums through payroll deductions or dues checkoffs and remitting them to the insurer; and (3) Performing only ministerial or ancillary tasks, such as answering basic questions or maintaining a list of covered employees, but not engaging in plan administration or assisting with claims.
- *No Endorsement.* Employers cannot endorse the plan. This means no recommending, sponsoring, or appearing to back the plan, either explicitly (such as using the company logo in plan materials) or implicitly (such as by negotiating plan terms or assisting with claims).
- *No Consideration.* Employers may not receive any consideration from the insurer. An exception applies to reasonable compensation for administrative services related to, e.g., payroll deductions or dues checkoffs.

If the employer exceeds these limitations, the arrangement may lose its safe harbor status and become subject to ERISA's requirements, including its fiduciary, reporting, and disclosure obligations. For more information, see EBIA's ERISA Compliance manual at Section VII.C ("Detailed Review of Voluntary Plan Safe Harbor").

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