

Chapter 16

Employment Retirement Income Security Act

Background

- Many firms offer employees the benefit of investing in the company's retirement plan
- In 1974, Congress enacted the Employee Retirement Income Security Act (ERISA)
 - The Act governs certain administrative aspects of employee benefit and retirement plans
 - ERISA does not require employers to provide any particular benefits
 - The purpose of the Act is to protect the interests of individuals participating in employee benefit plans

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Introduction

- The retirement savings of many employees depends on the market performance of the employer's stock.
- As stock values of large corporations declines, employees' retirement savings are at risk
- Statutory protections for retirement plan participants

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Myths about ERISA

- Your pension plans are not protected against the trustees who administer them
- No matter what, if you put money into a retirement plan, it will be there when you retire
- No matter what, if you put money into a retirement plan, it will not be there when you retire
- ERISA applies only to retirement or pension funds

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Statutory Basis

§1132. Civil Enforcement.

(a) A civil action may be brought—

(1) By a participant or beneficiary—

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

§1140. Interference with protected rights.

It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.

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Types of Plans to Which ERISA Applies

- Welfare plan provides:
 - Medical, surgical, or hospital care
 - Benefits for sickness, accident, disability or death
 - Unemployment benefits
 - Vacation benefits
 - Apprenticeship and training programs
 - Daycare centers
 - Scholarship funds
 - Prepaid legal services
 - Severance pay
- Pensions plans
 - Defined contribution plans
 - Defined benefit plans

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Who is Covered

- ERISA covers most private sector employee benefit plans
- ERISA does not cover plans established or maintained by governmental entities or churches
- ERISA does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens
- ERISA does not cover plans maintained for nonemployees such as a director or independent contractors

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Requirements of a Tax Qualified Plan

- The plan must be permanent.
- The plan must be in writing and communicated to all employees in a language they understand.
- The plan assets must be held in trust by one or more trustees.
- The plan must be for the exclusive benefit of the employees and their beneficiaries.
- The plan may not favor highly compensated employees.
- The plan must satisfy minimum participation, vesting, and distribution requirements.
- The plan must be established and maintained by the employer.

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Reporting and Disclosure

- Summary plan description
 - The plan participants' and beneficiaries' rights
 - Benefits
 - Responsibilities under the plan
- An annual report must be filed with the DOL
- The Sarbanes-Oxley Act of 2002

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Eligibility and Vesting Rules

- ERISA requires that all employees of age 21 or over who have completed one year of employment must be covered by their employer's pension plan
- 100% vested after five years
- Gradually nonforfeitable over seven years
- The employee cannot obtain the money until retirement

Vesting

Acquiring a right or an interest that is irrevocable by the donor.

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Fiduciary Duty

- Fiduciary requirements:
 - Loyalty
 - Exclusive purpose
 - Prudence
 - Diversification
 - Compliance with plan documents
- Investment decisions by the plan manager depend on the type of plan
- Individual account plans
- Company stock matching

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Funding Requirements for Defined Benefit Plans

- ERISA dictates how defined benefit plans should be funded throughout the years
- Employers with benefit plans must purchase insurance from the PBGC
- The PBGC is similar to the FDIC
 - Acts to insure pensions to a certain guaranteed limit in the event that the plan and the employer are unable to pay all promised benefits

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Modification of Benefit Plans

- An employer has a fiduciary duty to notify all employees of proposed plan changes
- “Serious consideration”
- If notice of possible changes are not given to employees, the firm should make eligibility for plan participation retroactive to the date of serious consideration

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The Health Insurance Portability and Accountability Act

- Statutory basis
 - Title I of the act relates to health insurance reform
 - Protections that relate to the portability of medical coverage
 - Title II covers administrative simplification, which targets the security and privacy of health information
- Administrative simplification compliance
 - Use of electronic technology heightening the potential for misuse of health information
 - Development and implementation delegated to the U.S. Department of Health and Human Services

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Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

- COBRA is the promise of temporarily continued health care coverage when someone stops working
- Applies to group health plans provided by employers with 20 or more employees
- Gives participants and beneficiaries the right to maintain, at their own expense, coverage under their health plan
- If any employee is legally terminated or loses benefit coverage due to a reduction in hours, COBRA requires extended health coverage for up to 18 months

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The Health Insurance Portability and Accountability Act (continued)

- HIPAA Privacy Rule
 - Addresses the permitted and prohibited use and disclosure of health information
 - Situations not requiring an individual’s authorization
 - Authorization forms
 - Protected health information (PHI)
 - Covered entities

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The Health Insurance Portability and Accountability Act (continued)

- General obligations of covered entities
 - Notify patients of the privacy rights
 - Explain how their PHI can be used or disclosed
 - Distribute a Notice of Privacy Practices
 - Adopt and implement privacy policies and procedures
- Enforcement of the Privacy Rule
 - Enforcement by the HHS Office for Civil Rights
 - Violations subject to civil and criminal sanctions
 - Does not preempt all state privacy laws

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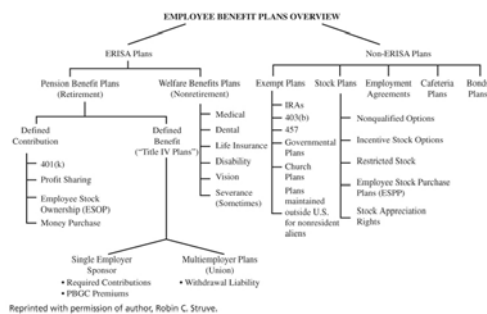
Enforcement of ERISA

- IRS
 - Responsible for requirements surrounding vesting, participation and funding
- Department of Labor
 - Administers the provisions with relation to disclosure, reporting and fiduciary responsibilities
- Section 510
- Some ERISA claims under section 510 may also be asserted under the ADEA

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Employee Benefit Plans Overview

Exhibit 16.3 Employee Benefit Plans Overview



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Summary

Concerns that management must address in considering the management implications of ERISA are:

- First, when organizing and implementing an employee benefit plan, the employer must ensure the plan meets the requirements for qualification as to participation, vesting, nondiscrimination, and funding.
- Second, the employer must determine who will be a fiduciary under the plan and ensure that only such fiduciaries have responsibility for administration and investments under the plan.
- Third, the employer should seek competent legal, accounting, and financial advisors to assist in compliance with the terms of ERISA, the tax code, and other laws affecting employee benefit plans.

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