

The following information is meant to provide a general overview of certain rules and factors involved in determining whether voluntary Critical Illness, Accident, Hospital Indemnity and Legal benefits are subject to ERISA and how this determination impacts these programs.

ERISA Considerations Voluntary Benefits



A graphic featuring the words "ERISA DEFINITION" in large, white, serif capital letters. The text is superimposed over a background image of an open book with aged, yellowed pages, resting on a wooden surface. To the right of the open book is a stack of several closed books. The background is softly blurred with warm, golden light, suggesting a library or study environment.

ERISA DEFINITION

The following information is meant to provide a general overview of certain rules and factors involved in determining whether voluntary Critical Illness, Accident, Hospital Indemnity and Legal benefits are subject to ERISA and how this determination impacts these programs. The employer in consultation with its legal counsel should make the final determination.

ERISA Definition

ERISA defines welfare benefit plans to mean:

- Any plan, fund, or program,
- Established or maintained by an employer or by an employee organization, or by both,
- For the purpose of providing for its participants or their beneficiaries, with
- Medical, surgical, or hospital care or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or any benefit described in Section 302(c) of the Labor Management Relations Act of 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

ERISA Safe Harbor

ERISA does not cover group-type insurance programs offered by an insurer to employers or members of an employee organization, under which:

- There are no contributions by the employer or employee organization;
- Participation in the program is completely voluntary;
- The sole functions of the employer or employee organization with respect to the arrangement are, without endorsing the program, to permit the insurer to publicize the program to members, collect premiums through payroll deductions or dues checkoffs, and to remit them to the insurer; and
- The employer or employee organization received no consideration, directly or indirectly, except reasonable compensation for administrative services rendered in collecting the premiums.

The provision in which an employer cannot endorse these programs poses to be the biggest challenge in obtaining a Safe Harbor classification. In addition, not effectively endorsing and communicating these plans may have an adverse effect on an employer's overall benefit strategy.





ERISA Requirements

If these programs are classified as welfare benefit plans under ERISA, they would be subject to certain rules including:

- Participants must sue in federal court (state law claims are generally barred on account of being preempted by ERISA);
- Damages are generally limited to unpaid benefits;
- Reporting and disclosure obligations and rules covering the conduct of plan fiduciaries;
- Rules covering use of plan assets and implementation of a claims procedure;
- Annually filing Form 5500;
- Providing summary plan descriptions (“SPDs”); and
- Penalties in the event of ERISA non-compliance.



ERISA Considerations for Employers

It is important for an employer to consider the following when determining whether to classify these programs as ERISA plans:

- Endorsing these plans allow an employer to better communicate and integrate into its overall benefits strategy (e.g., integration with major medical plans);
- Improves the employee experience by reducing the number of communication requirements and increases program educational opportunities;
- May reduce program costs through increased participation levels as a direct result of more effective communication;
- ERISA filing requirements should be minimal additional work, especially if a “wrapper” approach is used, and all necessary information will be provided by the insurance carrier;
- Additional plan description obligations will be provided by the insurance carrier; and
- Favorable litigation protections afforded under ERISA.

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VOLUNTARY BENEFITS ASSOCIATION*

Voluntary Benefits Association, Inc. a 501(c)(3) non-profit trade association

**FOR MORE INFORMATION,
CONTACT US AT:**

WWW.VBASSOCIATION.COM
[EMAIL: INFO@VBASSOCIATION.COM](mailto:INFO@VBASSOCIATION.COM)
(856) 405-3003