

ERISA & DISABILITY BENEFITS NEWSLETTER

ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits.

For more Information about Eric Buchanan & Associates, PLLC, visit our website at [www.buchanandisability.com](http://www.buchanandisability.com).

VOLUME 1, ISSUE 3, MAY 2009



Eric L. Buchanan, R. Scott Wilson, and D. Seth Holliday are certified as Social Security Disability Specialists by the Tennessee Commission on CLE and Specialization.

ERISA § 502<sup>©</sup> ACTIONS: PENALTIES FOR THE FAILURE TO PROVIDE PLAN DOCUMENTS PART 1 BY: ERIC BUCHANAN

When employers offer employee benefits such as health insurance, life insurance, long-term disability insurance, the employer creates an ERISA plan, and the plan administrator of that plan is required to make documents describing the plans available to their employees.

ERISA plan documents contain detailed explanations about the specific benefits that are provided in ERISA plans. If there is any dispute over the benefits, the plan documents set out the rights of the employee, the employer, the plan administrator, and the insurance company.

Obtaining an accurate copy of the plan documents is crucial when an employee is denied long-term disability or life insurance benefits, or medical benefits under a health insurance plan.

Also, when insurance companies or self-funded ERISA plans claim a right to subrogation or otherwise attempt to recover health benefits that were paid to an injured plaintiff, the specific rights the insurance company are set out in the plan documents.

Whenever there is a dispute over ERISA plan benefits and rights, employees and their attorneys should ask for copies of the plan documents early-on, and in writing.

This article is the first of three parts that will explain what rights an employee has to get ERISA plan documents, what ERISA plan documents an employee is entitled to, who an employee can sue to obtain the documents and what penalties an employee can seek if the plan administrator fails to provide documents when required to do so.

**I. ERISA plan documents-the basic rule:**

Generally speaking, when an employer chooses to provide benefits, the employer can purchase an insurance policy or can set up a self-funded plan. In either case, the

employer should name a “plan administrator” (and if they fail to name one, the employer is deemed to be the plan administrator).

ERISA plans should be established in writing; the principal document is the “ERISA Plan” itself. Plan administrators should also create a shorter, easier-to-read document, called a summary plan description (or “SPD”) that explains employees writes in easy-to-understand terms. If the plan includes an insurance policy, the policy itself is also a relevant document, and in some cases it takes the case of the ERISA plan document or the SPD.

The basic rule is that the Plan Administrator must provide these controlling plan documents upon written request. ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4) states, “The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary[] plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated.”

If an employee requests those documents in writing, the plan administrator must provide the documents within 30 days; if it does not, the employee may seek penalties of up to \$110 per day. For reasons explained below, the employer should specifically write to the “plan administrator” of the plan, if known, or simply to the “plan administrator” generally if not name is known.

**II. Specific provisions of ERISA:**

**A. The duties of the “Administrator.”**

Congress enacted ERISA and placed emphasis on employer’s or other plan sponsor’s obligations to provide information about the employee benefits as part of an overhaul of employee benefits law in the mid 1970’s. The in-

---

## ERISA & DISABILITY BENEFITS NEWSLETTER

---

tent of Congress was to provide greater protections for employees and greater transparency in the administration of employee benefits plans.

As part of this transparency, Congress gave employees the right to get copies of ERISA documents, and imposed a strict obligation on ERISA administrators to provide those documents and to respond to written requests for information.

ERISA § 502(c), 29 U.S.C. § 1132(c) provides for penalties for an administrator's refusal to supply required information. Under that section of ERISA,

(1) Any administrator [who fails to provide certain information] . . . (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day [\$110 for violations after July 29, 1997, see 62 Fed. Reg. 40696] from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

### III. Who must provide documents and may be sued for failing to provide documents under ERISA § 502(c)?

#### A. In most circuits, only the designated Plan Administrator is liable for a penalty under ERISA § 502(c).

ERISA § 502(c)(1) provides that "any administrator" who "fails or refuses to comply with a request for any information which such administrator is required by this title to

furnish to a participant or beneficiary" shall be, in the court's discretion, liable to the participant or beneficiary in the amount up to \$110 a day from the date of such failure or refusal.

Unfortunately, most circuits have read into ERISA an additional implied term that the language "any administrator" actually means only the Plan Administrator. For example,

It is well-settled in the Sixth Circuit that only plan administrators can be held liable for statutory penalties under 29 U.S.C. § 1132(c). *Caffey v. UNUM Life Ins. Co.*, 302 F.3d 576, 584 (6th Cir.1989); *Hiney Printing Co. v. Brantner*, 243 F.3d 956, 960 (6th Cir.2001); *VanderKlok v. Provident Life & Accident Ins. Co.*, 956 F.2d 610, 618 (6th Cir.1992). Furthermore, the Sixth Circuit has expressly held that "an insurance company, which is not a plan administrator cannot be held liable for statutory damages [under § 1132(c)] for failure to comply with an information request." *Caffey*, 302 F.3d at 58 (citing *VanderKlok*, 956 F.2d at 618).

*Addison v. Hartford Life and Accident Insurance*, 32 Emp. Ben. Cas. 1640, 2003 WL 23413737 (E.D.Tenn. 2003) (unpublished). See e.g. *Lee v. Burkhart*, 991 F.2d 1004 (2d Cir. 1993); *Coleman v. Nationwide Life Ins. Co.*, 969 F.2d 54 (4th Cir. 1992); *Anweiler v. American Electric Power Service Corp.*, 3 F.3d 986 (7th Cir. 1993); *Moran v. Aetna Life Insurance Co.*, 872 F.2d 296 (9th Cir. 1989), (the insurance company was not the "plan administrator" of an ERISA plan); *McKinsey v. Sentry*, 986 F.2d 401, 404-05 (10th Cir 1993); *Davis v. Liberty Mutual Ins. Co.*, 871 F.2d 1134 (D.C. Cir. 1989).

#### C. The statute of limitations in a plan documents penalties claim.

ERISA often adopts the analogous state statute of limitations. Because a participant or beneficiary seeking a penalty for failure to provide plan documents, Defense attorneys can argue that the analogous statute of limitations is one for punitive damages, which are often very short statutes of limitations.

---

### ERIC BUCHANAN & ASSOCIATES, PLLC UPCOMING CLE SPEAKING ENGAGEMENTS

Eric Buchanan will be speaking at the NOSSCR Conference in Washington, DC scheduled for May13-16, 2009 on "How to Ethically and Legally Charge a fee in a SS case at the administrative Level or in Court."

#### NEED A SPEAKER?

The attorneys at Eric Buchanan & Associates are available to speak to your organization regarding Social Security Disability, ERISA Long-term Disability, Group Long-term Disability, Private Disability Insurance, ERISA Benefits, Denied Health Insurance Claims and Life Insurance Claims.

---

Eric Buchanan & Associates, PLLC  
414 McCallie Avenue • Chattanooga, Tennessee 37402  
telephone (423) 634-2506 • fax (423) 634-2505 • toll free (877) 634-2506  
[www.buchanandisability.com](http://www.buchanandisability.com)

---