

ERISA & DISABILITY BENEFITS NEWSLETTER

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ERISA: A PRIMER TO THE BASIC STRUCTURE AND TERMINOLOGY OF ERISA PLANS BY: ERIC L. BUCHANAN

In our recent newsletters, we have discussed the duty of an ERISA plan administrator to respond to written requests for information about the contents of ERISA plans.¹ In this article, we will discuss in more detail the definitions of some of the key terms in ERISA plans, what documents make up an ERISA plan, and what documents a Plan Administrator must make available.

I. ERISA law tracks trust law, which is a good way to understand the structure of ERISA plans.

One of the best ways to understand the structure of ERISA plans is to remember that Congress drew heavily from trust law in designing the ERISA statute. See *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S.101, 103, (1989) (ERISA “abounds with the language and terminology of trust law”) and S.RepNo. 127, 93rd Cong, 1st Session, 30 (1973) (When enacting ERISA, Congress intended for the law of trusts to be the primary guide for disputes arising under employee benefits plans.)

II. Who are the players in ERISA plans?

In trust law the person who decides to set up a trust is called a “grantor” of a trust. Under ERISA the equivalent of the grantor of the trust is the “Plan Sponsor,” which is usually the employer who sets up the ERISA Plan.²

When a “grantor” sets up a trust, the grantor picks someone to be in charge of the trust and the assets of the trust, called a “trustee.” When an employer sets up an employee benefit plan, and becomes the “Plan Sponsor” of an ERISA plan, the employer designates someone to be in charge of

the plan; in an ERISA plan, that person is called the “Plan Administrator.” The Plan Administrator must be named in the controlling plan documents; if no one is named, then the “Plan Sponsor” is deemed to be the “Plan Administrator.”³

When an ordinary trust is set up, the purpose of a trust is usually to protect money or other assets for the use of someone else; usually that person is referred to as a beneficiary. When an ERISA plan is set up, for the purpose of providing employee benefits, the employees who are enrolled in the plan are typically referred to as the plan “participants,” who may be eligible for benefits under the plan. Sometimes employee benefits are provided to dependants or other people designated by an employee to receive certain benefits; those other people are referred to as ERISA “beneficiaries.”⁴ For example, when an employer sets up an ERISA health benefits plan that provides payment for medical expenses, the employees who are eligible for benefits if they get sick are referred to as “participants” and their dependants who do not work for the employer, but are covered under the plan, are referred to as “beneficiaries.”

III. What documents should be created when an ERISA plan is created?

In trust law, when a grantor of a trust establishes a trust, the grantor sets out in a trust document the person to control the trust (“trustee”), the purposes of the trust, the authority granted to the trustee and other terms under which

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the trust is operated. For an ERISA plan, the Plan Sponsor should create a document that similarly describes what the terms are of the ERISA plan.

Just as trust law normally requires a trust to be established by a written instrument, ERISA expressly requires that an ERISA plan be established in writing. 29 U.S.C. § 1102(a)(1), ERISA § 402(a)(1) states: "Every employee benefit plan shall be established and maintained pursuant to a written instrument." And, just like ordinary trust law requires naming a trustee and setting out authority for the trustee, an ERISA plan should set out who is the Plan Administrator, and set out what authority that administrator has. *Id.* ("Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.")

ERISA sets out the specific requirements of what must be in an ERISA plan. ERISA § 402(b), at 29 U.S.C. § 1102(b), states that a written plan must 1) provide a procedure for funding the plan, 2) describe the procedures for the allocation of responsibilities under the plan, 3) providing the procedures for amending the plan and identifying who has authority to amend the plan, and 4) specify how payments are made to and from the plan. ERISA also allows ERISA plans to contain optional features, such as the ability to hire people to offer advice to the plan. 29 U.S.C. § 1102(c), ERISA § 402(c) (listing several optional features of ERISA plans.)

One big difference between ERISA and ordinary trust law is that, in addition to creating the controlling plan document that is analogous to the trust document, ERISA also requires a summary plan description ("SPD") be provided to plan participants and beneficiaries. 29 U.S.C. § 1022, ERISA § 102. A summary plan description is a separate document from the plan itself, that contains a summary of the plan "written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a), ERISA § 102(a).

Under ERISA § 102(b), 29 U.S.C. § 1022(b), the SPD must contain a whole laundry list of information, such as, "the name and type of administration of the plan," "the name and address of the person designated as agent for the service of process," "the name and address of the administrator" of the plan, the source of financing of the plan, and the

procedures to be followed to make a claim for benefits.

ERISA also contains a requirement that ERISA plan administrators must provide plan participants a copy of the SPD applicable to the plan within 90 days after the employee becomes a participant of the plan. 29 U.S.C. § 1024(b)(1), ERISA § 104(b)(1). In addition to providing a copy when a claimant first becomes covered, ERISA also requires the administrator of the plan to provide an updated copy of the SPD within 210 days if the plan is materially changed, every five years if the plan is only amended in a minor way, or every ten years if no changes are made.

In addition to the plan document itself and the SPD, ERISA plans may also have an additional document that makes up the plan in cases where the plan is funded by an insurance policy. In ordinary trust law, when funding a trust, a grantor places money or other property into the trust. In ERISA, a Plan Sponsor can establish one of two types of plans. In an unfunded plan, the Plan Sponsor sets up an ERISA Plan that pays its obligations out of the Plan Sponsor's general assets. Or, a Plan Sponsor in ERISA can establish a "funded plan;" in a "funded plan" the Plan Sponsor can place money into a trust or by funding the trust with some other property, such as an insurance policy. 29 U.S.C. § 1101(b), ERISA § 401(b).

Thus, in the case where an ERISA plan provides insurance benefits under an ERISA plan, the plan sponsor and administrator should create an overall plan document, describing the ERISA plan, an SPD to be provided to employees, and should also maintain the actual insurance policy that sets out the terms of plan contained in the policy. However, in reality, many businesses do not know all the ERISA rules, and it is common for the insurance policy to be the only plan document, and sometimes it is used as the SPD as well.

IV. Conclusion

If you represent a client who has a question about employee benefits, or if your personal injury client was paid health benefits under an ERISA plan that claims a right of subrogation, the documents described above are the types of documents that your client can obtain if the client, or the attorney acting on the client's behalf, ask in a written request. 29 U.S.C. § 1132(c), ERISA § 502(c) As we explained in our last newsletter, the written request should be sent by certified mail, to prove what was requested and when.

¹ERISA § 502(c), 29 U.S.C. § 1132(c) provides for penalties for an administrator's refusal to supply required information; see our previous newsletter.

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²An ERISA plan may also be established, or sponsored by, an employee organization (i.e. a union) 29 U.S.C § 1002, ERISA § 3 (16) (B) states:


The term "plan sponsor" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization, or (iii) in the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

³29 U.S.C § 1002, ERISA § 3 (16) (A) states (emphasis added):

The term "administrator" means--

- (i) the person specifically so designated by the terms of the instrument under which the plan is operated;
- (ii) if an administrator is not so designated, *the plan sponsor*, or
- (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

⁴29 U.S.C. § 1002, ERISA § 3 (7) and (8)

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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. Contact Molina Haynes, Office Manager at (423) 634-2506 or via email at mhaynes@buchanandisability.com

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