

# **The Employee Retirement Security Act of 1974 (ERISA)**

## **What is ERISA?**

The Employee Retirement Security Act of 1974 (ERISA) is a federal law enforced by the U.S. Department of Labor that provides protection for individuals by setting minimum standards for most voluntarily-established pension and health plans.

## **What does ERISA do?**

ERISA guarantees payments of basic pension benefits to plan participants and beneficiaries, while also protecting these plans from mismanagement and abuse. ERISA does not require an employer to establish a pension or health benefit plan or require a minimum level of benefits but instead regulates the operation of those plans once they have been set up.

## **Who does ERISA cover?**

ERISA covers retirement plans and welfare benefit plans set up in the private industry. This includes roughly 684,000 retirement plans, 2.4 million health plans, and 2.4 million welfare benefit plans. More than 141 million workers and beneficiaries, along with \$7.6 trillion in assets, are covered by ERISA.

## **What plans are not covered by ERISA?**

ERISA does not cover group health plans set up or maintained by the government. It also does not cover the health maintenance organization (HMO) plans. If you have an issue with one of these, there may be other legal remedies available.

## **What are the responsibilities of a plan administrator under ERISA?**

ERISA requires that people or entities who can change plan management or plan assets, who control the plan administration, or who provide investment advice to a plan for profit are subject to “fiduciary responsibilities.” A “fiduciary duty” means a duty to act in the best interests of plan participants or beneficiaries.

## **What information about plans are plan administrators required to provide under ERISA?**

Plan administrators, or the people who run the plans, must give plan participants the most important facts they need to know about their plans. This includes plan rules, financial information, and documents on the operation and management of the plan.

Administrators also must give individuals the summary plan description that tells participants what the plan provides and how it operates, including telling them when an employee can begin to participate in the plan, how service and benefits are calculated, when benefits become vested, when and in what form benefits are paid, and how to file a claim for benefits.

## **What happens if my claim for benefits has been denied or terminated?**

An ERISA-covered plan must provide written notice to any participant or beneficiary whose claim for benefits has been denied and provide a full and fair process for review of the denial. “Full and fair” means that the participant must have enough time to work on the appeal, that documents and records be made available, and that nothing unreasonable is required. The actual requirements may depend on exactly what type of claim was originally filed.

## **What acts are a violation of ERISA?**

Some of the most common ERISA violations include:

- Improperly denying benefits to current or former employees,
- Breach of fiduciary duty toward employees covered by plans, and
- Interference with the rights of employees covered by plans.

This is by no means an exhaustive list. An ERISA violation may arise in any number of ways as long as there is a connection with a qualifying plan.

Each claim has different requirements, but generally, the claim must involve a beneficiary or plan participant who believes a violation has been committed by the plan administrator.

## **Can the legal options differ based on the violation?**

Yes. Some plans may require arbitration or some other type of dispute resolution outside of a courtroom. Certain ERISA violations, like improper withdrawal or transfer of plan assets, must go through arbitration.

Discrimination claims, even if arising from a pension issue, should be filed with the EEOC.

## **Do I have to exhaust my requests for administrative relief before filing a lawsuit?**

Technically, ERISA does not require this, but most courts have refused to allow a lawsuit to move forward until all administrative routes have been exhausted. This means in most cases you should go through the entire appeal process with your plan before moving on to court.

## **How do I make a claim under ERISA for a denial of benefits?**

An action against an employer who denies a claim usually follows the order below:

- A person covered under a plan or a plan beneficiary makes a claim for benefits.

- If the claim is denied, the participant must go through the plan's appeal process.
- If the appeal is denied or the participant is not satisfied, the participant must file a complaint with the Department of Labor's Employee Benefits Security Administration (EBSA).
- If EBSA determines there has been a violation, it will sue on behalf of plan participants to get any relief that fixes the violation.
- If EBSA determines there has been no violation, the participant will get a letter with the reasons for the decision and giving the process for further review. However, any further review will probably look at the investigation rather than the alleged violation.
- Once this process is exhausted, a participant can seek legal action.

## **How do I initiate an action against the plan administrator if they are doing something that hurts the plan participants and beneficiaries?**

You can make a "request for enforcement" through EBSA. This request must be in writing and contain enough information to identify any participant, beneficiary, or fiduciary and the plan involved. The request may be submitted by phone or online. EBSA will then initiate an investigation. EBSA will let the parties know whether its agents have found violations. Any action moving forward will be determined by EBSA's determination.

Find your local EBSA Regional Office to report a violation at [www.dol.gov/agencies/ebsa/about-ebsa/about-us/regional-offices](http://www.dol.gov/agencies/ebsa/about-ebsa/about-us/regional-offices).

## **Can someone other than the plan administrator violate ERISA?**

Yes. Third parties have been found liable under ERISA for certain actions that harm plan participants and beneficiaries. For example, the third party may interfere with the plan or engage in some type of self-serving action that harms the participants and beneficiaries.

# What type of penalties are available if a violation is found?

Both civil and criminal penalties can be assessed under ERISA. There are many types of civil penalties that can be assessed. For example, if a person appeals a denial of benefits and wins, that person can be awarded benefits that were improperly denied, interest accrued while benefits were withheld or denied, and any attorneys' fees the plan member may owe. For breaches of fiduciary duty and similar violations, EBSA can assess other civil penalties including fines and forcing the employer to change certain procedures and practices. The remedy will always be based on the type of harm. Punitive damages, pain and suffering, and lost income are not available under ERISA.

EBSA may also impose criminal penalties when the ERISA violation occurs through theft, misrepresentation, fraud, or coercive interference. Individuals may be jailed up to 10 years for egregious ERISA violations.

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