

Table of Contents

Volume 1

CHAPTER 1. INTRODUCTION AND SUMMARY OF MAJOR BENEFITS LEGISLATION

I. BASIC POLICIES OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

§ 1:1 General introduction to and basic policies—Employee Retirement Income Security Act of 1974

II. FEDERAL REGULATIONS OF EMPLOYEE BENEFIT PLANS

§ 1:2 Other federal regulation of employee benefit plans

§ 1:3 —Federal tax law

§ 1:4 —Requirements of federal labor law

III. STRUCTURE OF EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)

§ 1:5 Structure of ERISA

A. SUBCHAPTER I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

§ 1:6 Structure of ERISA—Protection of Employee Benefit Rights

§ 1:7 ——Reporting and Disclosure

§ 1:8 ——Participation and Vesting

§ 1:9 ——Funding

§ 1:10 ——Fiduciary Responsibility

§ 1:11 ——Administration and Enforcement

§ 1:12 ——Continuation Coverage and Additional Standards for Group Health Plans

§ 1:13 ——Group Health Plan Requirements

B. SUBCHAPTER II—JURISDICTION, ADMINISTRATION, ENFORCEMENT, AND JOINT PENSION TASK FORCE

§ 1:14 Structure of ERISA—Jurisdiction, Administration, Enforcement, and Joint Pension Task Force

C. SUBCHAPTER III—PLAN TERMINATION
INSURANCE

§ 1:15 Structure of ERISA—Plan Termination Insurance

**IV. CONSOLIDATED OMNIBUS BUDGET
RECONCILIATION ACT (COBRA) COVERAGE**

A. CONTINUATION OF GROUP HEALTH PLANS

§ 1:16 COBRA Continuation Coverage

B. FINAL AND PROPOSED REGULATIONS

§ 1:17 COBRA Continuation Coverage—Final and proposed regulations

§ 1:18 ——Determining part-time employees

§ 1:19 ——Application to HSAs

§ 1:20 ——Significant underpayment defined

§ 1:21 ——Meaning of “asset sale” clarified

C. COBRA AND THE SMALL BUSINESS JOB
PROTECTION ACT

§ 1:22 COBRA Continuation Coverage—SBJPA changes

D. COBRA AND HIPAA CHANGES

§ 1:23 COBRA Continuation Coverage—HIPAA changes

E. COBRA AND ARRA CHANGES

§ 1:24 COBRA Continuation Coverage—ARRA changes

F. OTHER REQUIREMENTS

§ 1:25 COBRA Continuation Coverage—Other requirements

**V. THE HEALTH INSURANCE PORTABILITY AND
ACCOUNTABILITY ACT OF 1996 (HIPAA)**

A. SUMMARY OF HIPAA

§ 1:26 HIPAA—Summary

B. PREEXISTING CONDITION LIMITATIONS

§ 1:27 HIPAA—Portability/preexisting condition limitations

C. SPECIAL ENROLLMENT RIGHTS

§ 1:28 HIPAA—Special enrollment

TABLE OF CONTENTS

D. EFFECTIVE DATES OF GROUP HEALTH PORTABILITY PROVISIONS

§ 1:29 HIPAA—Effective dates of portability and certification requirements

E. HEALTH STATUS PROHIBITION

§ 1:30 HIPAA—Discrimination based on health status prohibited
§ 1:31 ——Wellness programs
§ 1:32 ——Application to benefits or discrimination under other laws
§ 1:33 ——Source of injury rules
§ 1:34 ——Non-confinement and actively at work
§ 1:35 ——Americans with Disabilities Act (ADA)
§ 1:36 ——Compliance with other rules

F. HIPAA AND GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

§ 1:37 HIPAA—Discrimination based on genetic information prohibited

G. RENEWABILITY

§ 1:38 HIPAA—Guaranteed renewability

H. REPORTING AND DISCLOSURE

§ 1:39 HIPAA—Reporting and disclosure changes

I. SELF-EMPLOYED INDIVIDUALS

§ 1:40 HIPAA—Self-employed individuals

J. UNREIMBURSED EXPENSES

§ 1:41 HIPAA—Unreimbursed long-term care expenses

K. CAFETERIA PLANS

§ 1:42 HIPAA—Cafeteria plans
§ 1:43 —HIPAA and cafeteria plans—Change in status events
§ 1:44 —HIPAA and cafeteria plans—Significant cost
§ 1:45 ——Revisions to 2000 election changes
§ 1:46 ——Update to change in status rules

L. PRIVACY REGULATIONS

§ 1:47 HIPAA—Privacy regulations
§ 1:48 —HIPAA privacy regulations—Patient consent
§ 1:49 ——Minimum necessary standard
§ 1:50 ——Oral communications

- § 1:51 ——Further modifications
- § 1:52 ——Effective date
- § 1:53 ——Enforcement of administrative simplification rules

M. SECURITY RULES

- § 1:54 HIPAA—Security rules
- § 1:55 ——Administrative safeguards
- § 1:56 ——Physical safeguards
- § 1:57 ——Technical safeguards
- § 1:58 ——Person or entity authentication
- § 1:59 ——Transmission security

N. ENFORCEMENT OF HIPAA CHANGES

- § 1:60 HIPAA—Enforcement

O. HIPAA AND HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH)

- § 1:61 HIPAA—HITECH
- § 1:62 ——Business associates expanded
- § 1:63 ——Services
- § 1:64 ——Notification of data breach
- § 1:65 ——Additional penalties

VI. BENEFITS FOR MOTHERS AND NEWBORNS

- § 1:66 Standards relating to benefits for mothers and newborns

VII. THE MENTAL HEALTH PARITY ACT OF 1996 (MHPA)

- § 1:67 The Mental Health Parity Act of 1996
- § 1:68 —Compliance
- § 1:69 —Small employer exception
- § 1:70 —Increased cost exception
- § 1:71 —Direct and indirect effects
- § 1:72 —Litigation

VIII. WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998 (WHCRA)

- § 1:73 Women's Health and Cancer Rights Act of 1998
- § 1:74 —Requirements under the 1998 law

IX. THE MEDICARE PRESCRIPTION DRUG AND MODERNIZATION ACT OF 2003

A. HEALTH SAVINGS ACCOUNTS

- § 1:75 The Medicare Prescription Drug and Modernization Act of 2003—Health Savings Accounts

TABLE OF CONTENTS

- § 1:76 ——Eligibility
- § 1:77 ——Establishing an HSA
- § 1:78 ——Individual contributions
- § 1:79 ——Employer contributions
- § 1:80 ——Distributions
- § 1:81 ——HSAs offered by employers

B. MEDICARE PART D—PRESCRIPTION COVERAGE

- § 1:82 The Medicare Prescription Drug and Modernization Act of 2003—Prescription coverage
- § 1:83 —Medicare Part D prescription coverage—Notice obligation
- § 1:84 —The subsidy

X. THE PATIENT PROTECTION AND AFFORDABLE CARE ACT AND THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010

A. OVERVIEW

- § 1:85 The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010

B. APPLICATION TO GRANDFATHERED PLANS

- § 1:86 PPACA and Reconciliation Act—Grandfathered plans

C. COVERAGE FOR YOUNG ADULTS

- § 1:87 PPACA and Reconciliation Act—Adult dependents

D. PREVENTATIVE CARE

- § 1:88 PPACA and Reconciliation Act—Preventive care

E. PREEXISTING CONDITIONS

- § 1:89 PPACA and Reconciliation Act—Preexisting condition limitations prohibited

F. ANNUAL OR LIFETIME LIMITS

- § 1:90 PPACA and Reconciliation Act—Prohibition on annual or lifetime limits

G. RESCISSION

- § 1:91 PPACA and Reconciliation Act—Rescission

H. PATIENT PROTECTION REQUIREMENTS

- § 1:92 PPACA and Reconciliation Act—Patient protections
- § 1:93 —Designation of any primary care physician
- § 1:94 —Designation of pediatrician

§ 1:95 ——Designation of OB/GYN

I. APPEALS AND REVIEW

§ 1:96 PPACA and Reconciliation Act—Internal appeals and external review

J. NONDISCRIMINATION RULES

§ 1:97 PPACA and Reconciliation Act—Patient protections—Nondiscrimination rules

K. FLEXIBLE SPENDING ARRANGEMENTS, HEALTH SAVINGS ACCOUNTS, AND HEALTH REIMBURSEMENT ACCOUNTS

§ 1:98 PPACA and Reconciliation Act—FSA, HSA and HRA rules

L. W-2 REPORTING AND WAITING PERIODS

§ 1:99 PPACA and Reconciliation Act—W-2 reporting

§ 1:100 —Waiting periods

M. REQUIREMENTS ON EMPLOYERS

§ 1:101 PPACA and Reconciliation Act—Employer requirements

§ 1:102 —Insurance market reforms

XI. DOMESTIC PARTNER BENEFITS

§ 1:103 Domestic partner benefits

XII. WORKING FAMILIES TAX RELIEF ACT (WFTRA)

§ 1:104 Working Families Tax Relief Act

XIII. THE DEFENSE OF MARRIAGE ACT (DOMA)

§ 1:105 The Defense of Marriage Act

XIV. PENSION SIMPLIFICATION AND REFORM—THE SMALL BUSINESS JOB PROTECTION ACT OF 1996 (SBJPA)

§ 1:106 Pension simplification and reform—The Small Business Job Protection Act of 1996

§ 1:107 —SBJPA—Simple retirement plans

§ 1:108 ——Alternative nondiscrimination testing for 401(k) plans (Safe Harbor and Alternative Rules)

§ 1:109 ——Simplified definition of highly compensated employee

§ 1:110 ——Elimination of family aggregation rules

§ 1:111 ——Modification of participation rules

§ 1:112 ——Compensation limits and combined limits

TABLE OF CONTENTS

- § 1:113 ——New options for tax-exempt organizations
- § 1:114 ——Tax-deferred annuity changes
- § 1:115 ——Changes affecting individuals
- § 1:116 ——Joint and survivor annuity notice
- § 1:117 ——Prohibited transaction excise tax increased
- § 1:118 ——Ten-year vesting for multiemployer plans repealed
- § 1:119 ——Adoption of amendments
- § 1:120 ——Insurance company general accounts

XV. TAXPAYER RELIEF ACT

- § 1:121 Taxpayer Relief Act—Roth IRAs and Education IRAs
- § 1:122 —Roth IRAs
- § 1:123 —Education IRAs

XVI. SAVINGS ARE VITAL TO EVERYONE RETIREMENT ACT OF 1997 (SAVER ACT)

- § 1:124 Savings Are Vital to Everyone Retirement Act of 1997

XVII. THE SMALL BUSINESS JOBS ACT OF 2010

- § 1:125 The Small Business Jobs Act of 2010
- § 1:126 Coronavirus relief legislation

CHAPTER 2. COVERAGE AND SCOPE OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

I. COVERAGE OF ERISA

- § 2:1 Elements generally
- § 2:2 Plans covered
- § 2:3 Employee benefit plans
- § 2:4 Employee pension benefit plans
- § 2:5 Employee welfare benefit plans
- § 2:6 Plans must be established or maintained by an employer, labor union, or both
- § 2:7 Commerce requirement
- § 2:8 Requirement of participant or beneficiary status
- § 2:9 Exceptions and exclusions

II. SCOPE AND EFFECT OF ERISA

A. SCOPE

- § 2:10 Scope of ERISA generally

B. EFFECT ON STATE LAW

- § 2:11 Effect of ERISA on state law

- § 2:12 —State human rights laws
- § 2:13 —State health care laws
- § 2:14 —Common-law contract actions
- § 2:15 —Estoppel and waiver claims
- § 2:16 —Common-law tort actions
- § 2:17 —State labor and wage collection laws
- § 2:18 —State wrongful discharge litigation
- § 2:19 —State tax codes
- § 2:20 —Other state laws
- § 2:21 —State agency decisions and other state action

C. PREEMPTION

- § 2:22 State laws not preempted
- § 2:23 —State community property and domestic relations laws
- § 2:24 —State laws of garnishment and other creditors' rights
- § 2:25 —State corporate laws

D. EXCEPTIONS AND EXEMPTIONS

- § 2:26 Exceptions and exemptions generally
- § 2:27 Exceptions and exemptions—Saving clause for state insurance, banking and securities laws
- § 2:28 —Saving clause for state insurance law
- § 2:29 —Saving clause for state banking and securities law
- § 2:30 —State criminal laws

E. EFFECT ON OTHER FEDERAL LAWS

- § 2:31 ERISA's effect on other federal laws
- § 2:32 —Federal Labor Law
- § 2:33 —Federal securities regulation
- § 2:34 —Federal banking laws
- § 2:35 —The Federal Bankruptcy Code
- § 2:36 —Federal patent law
- § 2:37 —RICO

CHAPTER 3. REPORTING, DISCLOSURE AND OTHER PROCEDURAL REQUIREMENTS

I. POLICY, COVERAGE AND SCOPE

- § 3:1 Congressional policy relative to reporting and disclosure
- § 3:2 Coverage and scope of reporting and disclosure requirements

II. REPORTING AND DISCLOSURE REQUIREMENTS

- § 3:3 Who must satisfy the reporting and disclosure requirements
- § 3:4 Who is entitled to reporting and disclosure
- § 3:5 Summary of disclosure to participants and beneficiaries

TABLE OF CONTENTS

§ 3:6 Methods of disclosure to participants and beneficiaries

III. FEDERAL GOVERNMENT FILINGS

§ 3:7 Federal government filings—In general
§ 3:8 —Department of Labor filings
§ 3:9 —IRS filings
§ 3:10 —PBGC filings

IV. SARBANES-OXLEY ACT OF 2002

§ 3:11 Sarbanes-Oxley disclosure requirements

V. SUMMARY PLAN DESCRIPTION

§ 3:12 Summary plan description—Content requirements—
 General content requirements
§ 3:13 ——Specific content requirements for specific laws
§ 3:14 —Style and format—Standard of clarity
§ 3:15 —Time for distribution
§ 3:16 —Litigation issues—Common issues
§ 3:17 ——Non-disclosure
§ 3:18 ——SPDs as plan terms
§ 3:19 ——Silence of SPD
§ 3:20 ——Internal inconsistencies
§ 3:21 ——Summaries and other communications that are not
 SPDs
§ 3:22 ——Reliance by or prejudice to participants
§ 3:23 ——Disclaimers
§ 3:24 ——Other rules of construction
§ 3:25 ——Enforcement of compliant SPDs
§ 3:26 ——Reservation of rights to amend
§ 3:27 ——Individualized disclosure
§ 3:28 ——Estoppel
§ 3:29 Summary of material modifications
§ 3:30 Summary of benefits and coverage and Uniform Glossary

VI. THE ANNUAL REPORT

§ 3:31 The annual report—General requirements
§ 3:32 —Accounting, audit and actuarial requirements
§ 3:33 —Internal Revenue Code requirements
§ 3:34 —Forms and Filing requirements
§ 3:35 —DOL authority to reject incomplete filings
§ 3:36 The summary annual report
§ 3:37 Registration statements and individual notices
§ 3:38 Benefit reports
§ 3:39 Filings with Pension Benefit Guaranty Corporation

VII. EXCEPTIONS, EXEMPTIONS AND COMPLIANCE

§ 3:40 Exceptions, exemptions and alternate means of compliance

- § 3:41 —Blanket exemptions
- § 3:42 —Limited exemptions
- § 3:43 —Alternative means of compliance

VIII. REMEDIES FOR VIOLATIONS

- § 3:44 Remedies for violations—In general
- § 3:45 Remedies for violation—Judicial remedies
- § 3:46 —Regulatory remedies
- § 3:47 —Criminal penalties

IX. RETENTION OF RECORDS

- § 3:48 Retention of records—In general

Volume 2

CHAPTER 4. PARTICIPATION, VESTING AND BENEFIT ACCRUAL

I. POLICY, CONCEPTS AND COVERAGE

- § 4:1 Congressional policy, basic concepts, and coverage

II. PARTICIPATION

- § 4:2 Minimum participation, vesting, and benefit accrual standards—Introduction
- § 4:3 Participation—Minimum age and service requirements
- § 4:4 —Years and hours of service for participation (basic definitions)
- § 4:5 —Participation in multiemployer plans, predecessor plans, and plans maintained by employer groups
- § 4:6 —Coverage requirements
- § 4:7 —Additional participant requirements

III. CREDITING SERVICE

- § 4:8 Crediting service for participation, vesting, and benefit accrual
- § 4:9 —Computation periods
- § 4:10 —Years of service and one-year breaks in service
- § 4:11 —Breaks in service and rule of parity
- § 4:12 —Effect of maternity and paternity leave
- § 4:13 Crediting hours of service
- § 4:14 —Actual counting of hours
- § 4:15 —Equivalencies
- § 4:16 —Elapsed-time method of crediting service
- § 4:17 Crediting service in maritime industry
- § 4:18 Vesting standards

TABLE OF CONTENTS

- § 4:19 —Vesting schedules
- § 4:20 —Plan amendments changing vesting schedules

IV. FORFEITURES

- § 4:21 Forfeitures
- § 4:22 —“Bad boy” clauses and anticompetition provisions
- § 4:23 —Permitted forfeitures
- § 4:24 —Death of participant
- § 4:25 —Suspension of benefits upon employment or reemployment
- § 4:26 —Retroactive plan amendments affecting benefits
- § 4:27 —Withdrawal of mandatory employee contributions
- § 4:28 —Cessation of contributions under multiemployer plan and reduction and suspension of benefits by multiemployer plan
- § 4:29 —Offset provisions
- § 4:30 Integration of plan benefits with social security
- § 4:31 Restrictions in certain mandatory distributions
- § 4:32 Vesting requirements upon plan termination

V. BENEFIT ACCRUAL RULES

- § 4:33 Benefit accrual rules—In general
- § 4:34 —3% rule
- § 4:35 —133 $\frac{1}{3}$ % rule
- § 4:36 —Fractional rule
- § 4:37 —Accruals for service before effective date
- § 4:38 —First-two-years-of-service rule
- § 4:39 —Certain insured plans
- § 4:40 —Reductions due to age and continued accrual beyond normal retirement age
- § 4:41 —Allocation rules
- § 4:42 —Determination of accrued benefit: years of participation and service which may be disregarded
- § 4:43 Plan amendments affecting accrued benefits

VI. PAYMENT, TAX TREATMENT, AND PROHIBITIONS

- § 4:44 Requirement of joint and survivor annuity and preretirement survivor annuity
- § 4:45 Other provisions relating to form and payment of benefits
- § 4:46 Tax treatment of distributions from qualified pension plans
- § 4:47 Prohibitions against assignment or alienation of pension benefits
- § 4:48 Mergers and consolidations of plans and transfers of plan assets

VII. RECORDKEEPING

- § 4:49 Recordkeeping and reporting requirements

CHAPTER 5. MINIMUM FUNDING STANDARDS

- § 5:1 Congressional policy—Introduction and coverage
- § 5:2 Funding standards—Pre-2008 funding requirements
- § 5:3 —Charges to funding standard account
- § 5:4 —Credits to funding standard account
- § 5:5 —Multiemployer plans
- § 5:6 —Combining and offsetting
- § 5:7 —Interest rates
- § 5:8 —Post-2007 funding requirements
- § 5:9 —Funding requirements for single-employer plans
- § 5:10 —Minimum required contribution
- § 5:11 —Highlights—Determination of minimum required contribution
 - Interest rates used to determine present value
 - Payment of minimum required contributions
 - Requirement for quarterly contributions
 - Standing election to satisfy installments through use of funding balances
 - Liquidity shortfalls
 - Taxes on failure to meet minimum funding standards
 - At-risk single-employer plans
 - Maximum deductible contribution
 - Lump sum benefits/straight life annuity
 - Liability for payment
 - Single-employer plans—Funding-based benefit limitations
 - Restrictions on deferred compensation benefits
 - Modification and relief provisions for certain plans and certain industries
 - Funding requirements for multiemployer plans
 - Special rules—Significantly underfunded multiemployer plans
 - Worker, Retiree, and Employer Recovery Act of 2008
 - Establishment of funding method and reasonableness
 - Shortfall funding method (collectively bargained plans)
 - Limitations on employer contributions
 - Plans of more than one employer and controlled groups and collectively bargained plans
 - Alternative minimum funding standard
 - Funding requirements of Omnibus Budget Reconciliation Act of 1987—Accelerated funding
 - Changes in funding method
 - Security for plan amendments
 - Actuarial assumptions
 - Valuation of assets
 - Plan liabilities: experience gains and losses
 - Actuarial cost method

TABLE OF CONTENTS

- § 5:40 Waiver and relief provisions
- § 5:41 —Variance from minimum funding standard
- § 5:42 —Extensions of amortization periods
- § 5:43 —Special requirements relating to waivers and extensions
- § 5:44 Remedies and penalties for violation of funding requirements
- § 5:45 Quarterly contribution payments
- § 5:46 Reporting obligations
- § 5:47 Department of Labor requirements

CHAPTER 6. FIDUCIARY RESPONSIBILITY

I. FIDUCIARY RESPONSIBILITY

A. INTRODUCTION TO FIDUCIARY RESPONSIBILITY

- § 6:1 Introduction, purpose, and coverage

B. FIDUCIARY

- § 6:2 Who is a fiduciary
- § 6:3 —Investment advisors
- § 6:4 —Mutual fund companies
- § 6:5 —Insurance companies, brokers and agents
- § 6:6 —Health Maintenance Organizations
- § 6:7 —Sponsoring employer
- § 6:8 —Plan administrators
- § 6:9 —Directed trustees
- § 6:10 —Union officials
- § 6:11 —Court-appointed plan officers
- § 6:12 —The PBGC
- § 6:13 —Timing of fiduciary status
- § 6:14 —“To the extent” rule
- § 6:15 —Ministerial functions

II. PLAN CONTENT

- § 6:16 Legal requirements as to plan content
- § 6:17 —Establishment of plan
- § 6:18 —Establishment of a trust
- § 6:19 —Exceptions
- § 6:20 —Refunds
- § 6:21 —Reversion on plan termination
- § 6:22 —Failure of qualification
- § 6:23 —Procedural questions

III. FUND MANAGEMENT REQUIREMENTS AND EXCLUSIVE PURPOSE RULE

- § 6:24 Fund management requirements
- § 6:25 Exclusive purpose rule

- § 6:26 —Investment of plan assets
- § 6:27 —Employer securities
- § 6:28 —Plan losses
- § 6:29 —Valuation
- § 6:30 —Voting of shares
- § 6:31 —Use of plan assets for policy or political issues or union organizing
- § 6:32 —Other investments
- § 6:33 —Retention or transfer/disposition of plan assets
- § 6:34 —Selection of service providers
- § 6:35 —Fiduciary misrepresentations
- § 6:36 —Plan interpretation
- § 6:37 —Plan amendment
- § 6:38 —Benefits
- § 6:39 —Failure to provide information to a participant
- § 6:40 —Applicability only to plan assets of ERISA plans
- § 6:41 —Tangential benefit to other parties
- § 6:42 —Transfer of fiduciary obligation
- § 6:43 —Funding issues
- § 6:44 Fund management requirements—Prudent Man Rule
- § 6:45 —Diversification of investments
- § 6:46 —Administration in accordance with plan documents
- § 6:47 Responsibility for acts of others and allocation of responsibilities

IV. PROHIBITED TRANSACTIONS

- § 6:48 Prohibited transactions
- § 6:49 —Transactions between plan and party in interest
- § 6:50 —Self-dealing or acting adversely to trust's interests
- § 6:51 —Use of plan assets for own account
- § 6:52 —Acting for adverse party
- § 6:53 —Receipt of consideration
- § 6:54 Tax penalties

V. LIMITATIONS

- § 6:55 Ten percent limitation on acquisition and retention of employer securities and employer real property

VI. EXEMPTIONS

- § 6:56 Exemptions from prohibited transactions
- § 6:57 —Statutory exemptions
- § 6:58 ——Investment advice
- § 6:59 ——Block trades
- § 6:60 ——Electronic communication networks
- § 6:61 ——Foreign exchange transactions
- § 6:62 ——Cross trading
- § 6:63 —Administrative exemptions

TABLE OF CONTENTS

- § 6:64 —Services or office space
- § 6:65 —Reason for the rule
- § 6:66 —Who is covered
- § 6:67 —What must be disclosed
- § 6:68 —When disclosure must be made
- § 6:69 —Result when disclosure requirement not met
- § 6:70 —Loans to participants
- § 6:71 —Loans to employee stock ownership plans
- § 6:72 —Bank deposits
- § 6:73 —Ancillary services provided by bank
- § 6:74 —Acquisition or sale of qualifying employer securities
- § 6:75 —Receipt of benefits, reasonable compensation, and serving in dual capacities
- § 6:76 Owner-employees, family members, and shareholder-employees

VII. LIABILITY

- § 6:77 Liability for breach of fiduciary duty

VIII. DEFENSES

- § 6:78 Defenses
- § 6:79 —Good faith
- § 6:80 —Indemnity and contribution
- § 6:81 —Passive and active conduct
- § 6:82 —Settlement agreements
- § 6:83 —Advice of counsel
- § 6:84 —Quantum meruit
- § 6:85 —Directed trustees
- § 6:86 —Waiver
- § 6:87 —Imprudent investment in employer stock
- § 6:88 —Employment of others
- § 6:89 —Information available elsewhere
- § 6:90 —Breach by others
- § 6:91 —Net investment performance
- § 6:92 —Technical defenses
- § 6:93 —Exemptions
- § 6:94 —Statute of limitations

IX. LIABILITIES AND PROHIBITIONS

- § 6:95 Liability of nonfiduciaries
- § 6:96 Exculpatory provisions and insurance
- § 6:97 Prohibition against certain persons holding certain positions

X. BONDING

- § 6:98 Bonding of fiduciaries

XI. FIDUCIARY OBLIGATIONS

- § 6:99 Limitation on actions for breach of fiduciary obligation

CHAPTER 7. PLAN TERMINATION INSURANCE AND WITHDRAWAL LIABILITY

I. INTRODUCTION

- § 7:1 Introduction
- § 7:2 Establishment of PBGC; purpose and powers
- § 7:3 Available coverage (guaranteed benefits)

II. GUARANTEED BASIC AND NONBASIC BENEFITS

- § 7:4 Guaranteed basic benefits (single employer plans)
- § 7:5 —Reduction and recoupment of benefit payments (single employer plans)
- § 7:6 Guaranteed nonbasic benefits (single employer plans)
- § 7:7 Guaranteed basic benefits (multiemployer plans)
- § 7:8 Guaranteed nonbasic benefits (multiemployer plans)
- § 7:9 Aggregate limit on guaranteed benefits

III. PREMIUM PAYMENTS AND SCHEDULES

- § 7:10 Premium payments and schedules
- § 7:11 —Premium rates for single employer plans
- § 7:12 ——Flat rate Premium and variable rate premium
- § 7:13 ——Deficit Reduction Act
- § 7:14 ——Variable rate premium
- § 7:15 —Premium rates for multiemployer plans

IV. PARTICIPANTS, RESPONSIBILITIES, WAIVERS AND OTHER EVENTS

- § 7:16 Counting the number of participants (for all types of plans)
- § 7:17 Responsibility for payment and filing requirements
- § 7:18 Waivers and late charges
- § 7:19 Reportable events

V. TERMINATION OF SINGLE EMPLOYER PENSION PLANS

- § 7:20 Termination of single employer pension plans under SEPPAA
- § 7:21 —Commencement of voluntary termination proceedings
- § 7:22 —Standard termination of single employer plans
- § 7:23 ——Notice requirements
- § 7:24 ——PBGC determination
- § 7:25 ——Final distribution of assets
- § 7:26 —Distress terminations
- § 7:27 ——Notice requirements
- § 7:28 ——PBGC determination
- § 7:29 ——Statutory procedure

TABLE OF CONTENTS

- § 7:30 ——Distribution of assets
- § 7:31 ——Administration during termination proceedings
- § 7:32 ——Restoration of the plan
- § 7:33 —Allocation of assets on termination—Order of allocation
- § 7:34 ——Priority 1
- § 7:35 ——Priority 2
- § 7:36 ——Priority 3
- § 7:37 ——Priority 4, 5 and 6
- § 7:38 ——Method of allocation
- § 7:39 —Reversion of excess assets
- § 7:40 ——Tax consequences of reversion
- § 7:41 ——Other restrictions on reversions
- § 7:42 —Recapture of certain payments
- § 7:43 —Valuation of assets and benefits and date of termination

VI. TERMINATION OF MULTIEMPLOYER PLANS

- § 7:44 Termination of multiemployer plans—Reasons for termination and effective dates
- § 7:45 —Notice and reporting requirements
- § 7:46 —Administrative duties of plan sponsors of mass-withdrawal-terminated plans
- § 7:47 Involuntary termination by the PBGC
- § 7:48 Employer liability for termination
- § 7:49 —Liability for termination of single employer plans under distress or involuntary terminations
- § 7:50 ——Liability to PBGC
- § 7:51 ——Liability to trustee
- § 7:52 ——Tax deductibility
- § 7:53 ——Claim priority in bankruptcy
- § 7:54 ——Transactions to avoid liability
- § 7:55 ——Liability of substantial employer
- § 7:56 ——Enforcement authority
- § 7:57 ——Administrative procedures
- § 7:58 ——Restoration of plans

VII. EMPLOYER WITHDRAWAL LIABILITY

- § 7:59 Employer withdrawal liability under multiemployer pension plans
- § 7:60 —Complete withdrawal
- § 7:61 —Reduction or waiver of complete withdrawal liability
- § 7:62 —Partial withdrawals from a multiemployer plan
- § 7:63 —Exemptions for certain industries and new employers
- § 7:64 —Exemption from complete withdrawal for change in corporate structure and labor disputes
- § 7:65 —Limitations on amount of withdrawal liability
- § 7:66 —De minimis rules
- § 7:67 —Dollar limitations on withdrawal liability
- § 7:68 —Calculation of withdrawal liability

- § 7:69 —Presumptive method
- § 7:70 ——The post-September 25, 1980 liability
- § 7:71 ——The pre-September 26, 1980 liability
- § 7:72 —The modified presumptive method
- § 7:73 —The rolling-5 method
- § 7:74 —Direct attribution method
- § 7:75 —Alternative methods and modifications
- § 7:76 —Transactions to evade liability
- § 7:77 —Notice of liability and payment
- § 7:78 —Mass withdrawal/allocating liability
- § 7:79 —Who is liable for withdrawal liability
- § 7:80 ——Common control groups
- § 7:81 ——Sole proprietors
- § 7:82 ——Officers and shareholders
- § 7:83 ——Other issues
- § 7:84 —Resolution of disputes and interim liability
- § 7:85 ——Requirement of arbitration
- § 7:86 ——Arbitration procedures—Procedures specified in PBGC regulations
- § 7:87 ———International Foundation/American Arbitration Association Procedures
- § 7:88 ———Obligation to pay pending review
- § 7:89 ———Presumptions in arbitration
- § 7:90 ———Review of award
- § 7:91 —Civil enforcement

VIII. REORGANIZATION, MERGERS AND TRANSFERS

- § 7:92 Employer withdrawal liability under multiemployer pension plans—Supplemental and voluntary withdrawal liability payment funds
- § 7:93 Mergers of plans and transfers of plan assets and liabilities

CHAPTER 8. ADMINISTRATION AND ENFORCEMENT

I. ENFORCEMENT OF ERISA

A. DEPARTMENT OF LABOR

- § 8:1 Enforcement of ERISA by Department of Labor and Department of Treasury
- § 8:2 —DOL—Reporting and disclosure
- § 8:3 ——Plan expenses
- § 8:4 ——Participation, vesting and funding
- § 8:5 —Fiduciary obligation (joint authority)

B. INTERNAL REVENUE SERVICE

- § 8:6 Enforcement of ERISA by Department of Labor and

TABLE OF CONTENTS

- Department of Treasury—IRS—Tax qualification—
 - Determination letters
 - § 8:7 —— “Savings Initiative”
 - § 8:8 —— Correction procedures
 - § 8:9 —— HEART Act
 - § 8:10 —— Final 401(k) regulations

II. PENALTIES, ENFORCEMENT AND APPLICABLE LAW

- § 8:11 Criminal penalties
- § 8:12 Civil enforcement—In general
- § 8:13 Applicable law and principles of construction
- § 8:14 Actions for benefits

III. ACTIONS FOR BENEFITS

A. ENTITLEMENT TO SUE

- § 8:15 Actions for benefits—Classes of persons entitled to sue for benefits
 - § 8:16 —— Participants
 - § 8:17 —— Beneficiaries
 - § 8:18 —— Assignees
 - § 8:19 —— Fiduciaries and plan administrators
 - § 8:20 —— Other parties
 - § 8:21 —— Claim must arise under ERISA

B. SUBJECT TO SUIT

- § 8:22 Actions for benefits—Persons subject to suit for benefits

C. ELEMENTS OF RECOVERY

- § 8:23 Actions for benefits—Elements of recovery of plan benefits, enforcement of plan terms and clarification of future benefits
 - § 8:24 —— Rules of construction
 - § 8:25 —— Application of state/federal common law
 - § 8:26 —— Plan recovery of overpayments

D. ACTIONS FOR SEVERANCE BENEFITS

- § 8:27 Actions for benefits—Actions for severance benefits—In general
 - § 8:28 —— “Change of control,” sale or plant closing
 - § 8:29 —— “Good reason”
 - § 8:30 —— Requirement of a release
 - § 8:31 —— Vesting of severance
 - § 8:32 —— Application of state law
 - § 8:33 —— Severance not an employment guarantee

E. RELIEF

§ 8:34 Actions for benefits—Relief available—In general
§ 8:35 —Availability of individual relief

F. NON-EQUITABLE BENEFITS

§ 8:36 Actions for benefits—Claims for “benefits” ruled not equitable in nature

G. PLAN REIMBURSEMENT ACTIONS

§ 8:37 Actions for benefits—Plan reimbursement actions—Relief not allowed
§ 8:38 ——Relief allowed

H. “MAKE WHOLE” RULE

§ 8:39 Actions for benefits—Application of the “make whole” rule

I. AGREEMENTS, RELEASES AND WAIVERS

§ 8:40 Actions for benefits—Settlement agreements, releases and participant waivers

J. ATTORNEY’S FEES

§ 8:41 Actions for benefits—Award of attorney’s fees
§ 8:42 —Amount of attorney’s fees

K. RECOVERY AND DAMAGES

§ 8:43 Actions for benefits—Recovery of costs and interest
§ 8:44 —Punitive damages

L. STANDARD OF COURT REVIEW

§ 8:45 Actions for benefits—Standard of court review—Arbitrary and capricious
§ 8:46 ——De novo
§ 8:47 ——Application of arbitrary and capricious rule after *Firestone*
§ 8:48 ——Application of arbitrary and capricious rule after *Firestone*—Effect of “proof of loss” provisions
§ 8:49 ——Application of arbitrary and capricious rule after *Firestone*—Effect of a conflict of interest
§ 8:50 ——Examples of application—Experimental treatment
§ 8:51 ——Cancellation of service credit and suspension of benefits
§ 8:52 ——Disclosure of financial difficulties
§ 8:53 ——Contravention of plan language
§ 8:54 ——Ambiguity and silence
§ 8:55 ——Examples of application

TABLE OF CONTENTS

- § 8:56 ——Conflict with ERISA policies
- § 8:57 ——Failure to develop information or offer an explanation
- § 8:58 ——Violation of collective bargaining agreement
- § 8:59 ——Decision legally incorrect
- § 8:60 ——Amendment issues

M. RIGHT TO JURY TRIAL

- § 8:61 Actions for benefits—Right to jury trial

N. PROCEDURAL CONSIDERATIONS

- § 8:62 Actions for benefits—Procedural considerations—Jurisdiction
- § 8:63 ——Pendent jurisdiction
- § 8:64 ——Removal and the “well-pleaded complaint” rule
- § 8:65 ——Venue
- § 8:66 ——Service of process
- § 8:67 ——Res judicata/collateral estoppel/issue preclusion
- § 8:68 ——Mootness
- § 8:69 ——Attorney-client privilege
- § 8:70 ——Discovery

O. CLASS ACTIONS

- § 8:71 Actions for benefits—Class actions

P. STATUTE OF LIMITATIONS AND ACCRUAL

- § 8:72 Actions for benefits—Statute of limitations and accrual of cause of action

Q. CLAIMS PROCEDURE

- § 8:73 Actions for benefits—Claims and appeals procedures
- § 8:74 ——Claims procedure—“Full and fair review”
- § 8:75 ——Exhaustion requirement
- § 8:76 ——Claims and appeal procedures—Futility and inadequacy

R. ARBITRATION

- § 8:77 Actions for benefits—Arbitration

IV. PROHIBITED DISCRIMINATION

- § 8:78 Prohibited discrimination—Interference with protected rights
- § 8:79 ——Jurisdiction over civil actions for prohibited discrimination
- § 8:80 ——Parties to action for prohibited discrimination
- § 8:81 ——Elements of action for prohibited discrimination and burden of proof

- § 8:82 ——Procedural considerations in actions for prohibited discrimination
- § 8:83 ——Relief available for prohibited discrimination and class actions
- § 8:84 ——Exhaustion of internal remedies
- § 8:85 ——Arbitration

V. COMPEL DISCLOSURE

- § 8:86 Actions to compel disclosure
- § 8:87 —Parties to suit
- § 8:88 —Suits based on a request for information
- § 8:89 —Penalties
- § 8:90 —Procedural considerations

VI. BREACH OF FIDUCIARY DUTY

A. FIDUCIARY DUTY

- § 8:91 Actions for breach of fiduciary duty
- § 8:92 —Parties entitled to maintain an action for breach of fiduciary duty
- § 8:93 —Persons against whom suit may be brought
- § 8:94 —Jurisdiction
- § 8:95 —Venue
- § 8:96 —Standard of court review
- § 8:97 —Arbitration
- § 8:98 —Exhaustion of internal remedies
- § 8:99 —Class actions
- § 8:100 —Jury trial
- § 8:101 —Privileges
- § 8:102 —Burden of proof
- § 8:103 —Limitations period and accrual of cause of action

B. RELIEF AVAILABLE FOR BREACH

- § 8:104 Actions for breach of fiduciary duty—Relief available in actions for breach of fiduciary duty
 - Monetary damages
 - Rescission and restitution
 - Attorneys' fees, costs, interest and other fees
 - Constructive trusts
 - Injunctive relief
 - Removal of fiduciaries
 - Contribution and indemnity

VII. CIVIL ACTIONS

- § 8:112 Civil actions relating to collectively bargained trusts
- § 8:113 —Actions to enforce delinquent contributions (multiemployer plans)

TABLE OF CONTENTS

- § 8:114 —The obligation to contribute—General principles
- § 8:115 —Form of agreement
- § 8:116 —Contractual termination provisions
- § 8:117 —Defenses
- § 8:118 —Union majority status and prehire agreements
- § 8:119 —Other contractual issues
- § 8:120 —Liability of nonsignatory parties
- § 8:121 —Obligation to contribute following expiration of collective bargaining agreement
- § 8:122 —Other National Labor Relations Board Issues
- § 8:123 —Audit of employer records
- § 8:124 —Offset of overpayments
- § 8:125 —Procedural considerations—Jurisdiction
- § 8:126 —Venue
- § 8:127 —Parties
- § 8:128 —Burdens of proof, evidence, right to jury trial and defenses
- § 8:129 —Limitations of actions
- § 8:130 —Remedies

Table of Laws and Rules

Table of Cases

Index