

# Table of Contents

## Volume 1

### **CHAPTER 1. BACKGROUND AND DEVELOPMENT OF EMPLOYEE BENEFITS LAW**

§ 1:17 Benefits professionals and practice

### **CHAPTER 2. ELEMENTS OF FIDUCIARY RESPONSIBILITY**

§ 2:2 Plan

§ 2:3 Plan—Pension plans

§ 2:4 Plan—Top hat plans

§ 2:5 Plan—Welfare plans

§ 2:6 Plan—Single-employer, multiemployer, and multiple employer plans

§ 2:7 Formality requirements

§ 2:8 Fiduciary

§ 2:9 Nature of fiduciary conduct

§ 2:10 Plan assets

§ 2:11 Plan sponsor, administrator, and controlled group

§ 2:12 Employee

§ 2:14 Parties who may seek relief

§ 2:15 Nonfiduciary actors and conduct

### **CHAPTER 3. STANDARDS OF CONDUCT AND RELATED DUTIES**

§ 3:2 Applicability of fiduciary requirements

§ 3:3 General standards of conduct

§ 3:4 General standards of conduct—Exclusive purpose

§ 3:5 General standards of conduct—Prudence and diligence

§ 3:6 General standards of conduct—Diversification

§ 3:7 General standards of conduct—Compliance with governing documents

§ 3:10 Prohibited transactions—Prohibited acts

§ 3:12 Prohibited transactions—Statutory exemptions—Loans

§ 3:13 Prohibited transactions—Statutory exemptions—Outside services and office space

- § 3:19 Prohibited transaction—Administrative exemptions
- § 3:21 Basic statutory requirements for ERISA plans
- § 3:23 Operational principles of fiduciary conduct—Plan communications
- § 3:24 Operational principles of fiduciary conduct—Delivery of promised benefits
- § 3:25 Operational principles of fiduciary conduct—Management of plan assets
- § 3:29 Operational principles of fiduciary conduct—Maintenance of records
- § 3:30 Operational principles of fiduciary conduct—Selecting delegates and monitoring their performance
- § 3:32 Miscellaneous fiduciary issues—Non-fiduciary decisions and conduct
- § 3:34 Miscellaneous fiduciary issues—Proxy voting
- § 3:37 Miscellaneous fiduciary issues—Disparate treatment of classes of participants and beneficiaries within single plan
- § 3:38 Miscellaneous fiduciary issues—Collectively bargained plans
- § 3:39 Miscellaneous fiduciary issues—Multiemployer issues
- § 3:40 Miscellaneous fiduciary issues—Social investing
- § 3:43 Miscellaneous fiduciary issues—ESOPs

## **CHAPTER 4. RESPONSIBILITIES OF COFIDUCIARIES AND OTHERS**

- § 4:10 Service providers—Trustees, banks, investment managers, and other investment counsel
- § 4:12 Service providers—Other service providers

## **CHAPTER 5. REMEDIES AND LIABILITIES**

- § 5:4 Statutory provisions—Civil remedies—Section 502
- § 5:6 Statutory provisions—Civil remedies—Penalties
- § 5:8 Judicially fashioned remedies
- § 5:9 Judicially fashioned remedies—Monetary relief
- § 5:10 Judicially fashioned remedies—Equitable relief; injunctive and declaratory relief
- § 5:23 Contribution and indemnification among co-fiduciaries

## **Volume 1A**

## **CHAPTER 6. TECHNIQUES FOR LIMITING LIABILITY EXPOSURE**

- § 6:2 Relationship of plan design and fiduciary liability exposure

## TABLE OF CONTENTS

- § 6:3 Informal delegation of authority to act on behalf of plan
- § 6:4 Formal allocation of fiduciary responsibility
- § 6:8 Fiduciary liability insurance
- § 6:9 Fiduciary liability insurance—Single-employer plans
- § 6:11 Plan sponsor and other indemnification
- § 6:14 Participant directed accounts

## **CHAPTER 7. COMMON ACTORS AND PRACTICES**

- § 7:3 Selecting type of plan and form of plan document
- § 7:6 Parties assuming responsibility—Board of directors
- § 7:7 Parties assuming responsibility—Officers
- § 7:9 Parties assuming responsibility—Trustee
- § 7:10 Parties assuming responsibility—Administrator
- § 7:13 Parties assuming responsibility—Insurance company
- § 7:14 Parties assuming responsibility—Actuary
- § 7:15 Parties assuming responsibility—Accountant
- § 7:16 Parties assuming responsibility—Consultants
- § 7:17 Parties assuming responsibility—Third-party administrator
- § 7:24 Activities of ongoing plans—Meeting minimum standards—Pension plan minimum standards
- § 7:25 Activities of ongoing plans—Meeting minimum standards—Pension plan minimum standards—Controlled groups and related entities
- § 7:27 Activities of ongoing plans—Meeting minimum standards—Pension plan minimum standards—Employer contributions and plan funding
- § 7:32 Activities of ongoing plans—Distributions
- § 7:34 Activities of ongoing plans—Distributions—Annuities
- § 7:35 Activities of ongoing plans—Distributions—Other distributions
- § 7:36 Activities of ongoing plans—Distributions—Tax withholding and payroll taxes
- § 7:37 Activities of ongoing plans—Distributions—Rollovers
- § 7:38 Activities of ongoing plans—Determining distributees
- § 7:43 Activities of ongoing plans—Plan amendments
- § 7:44 Corporate mergers, acquisitions, and divestitures
- § 7:45 Unusual events and circumstances
- § 7:47 Plan mergers, spinoffs, conversions, and transfers of assets

## **CHAPTER 8. AVOIDING LITIGATION**

- § 8:7 Benefit claims in general
- § 8:8 Benefit claims in general—Presenting claims
- § 8:9 Benefit claims in general—Responding to claims
- § 8:12 Settlements, waivers, and releases

## **CHAPTER 9. THRESHOLD CONSIDERATIONS IN REPRESENTING PARTIES TO BREACH OR CLAIM DISPUTES**

§ 9:8 Representing parties asserting breach or benefit claims—  
Moving case forward

## **CHAPTER 10. DEALING WITH THE GOVERNMENT**

### **I. INTRODUCTION**

§ 10:1 Scope of chapter

### **II. DEPARTMENT OF LABOR**

§ 10:3 Statutory authority

§ 10:4 Agency organization

§ 10:5 Regulatory activities in general

§ 10:8 Civil matters—Administrative matters—Regulations,  
interpretations, and advisory opinions

§ 10:10 Civil matters—Administrative matters—Other rulings  
and guidance

§ 10:11 Civil matters—Administrative matters—Investigations,  
audits, and examinations

§ 10:12 Civil matters—Administrative matters—Subpoenas

§ 10:13 Civil matters—Administrative matters—Penalties

§ 10:14 Civil matters—Administrative matters—Reporting to  
Department of Labor

§ 10:15 Civil matters—Administrative matters—Defect correction  
programs

§ 10:16 Civil matters—Civil litigation

### **III. DEPARTMENT OF THE TREASURY AND INTERNAL REVENUE SERVICE**

§ 10:20 Agency organization

§ 10:21 Regulatory activities in general

§ 10:23 Administrative matters—qualified status of plans

§ 10:24 Administrative matters—qualified status of plans and  
determination letters—Procedures for obtaining  
determination letters

§ 10:25 Administrative matters—qualified status of plans and  
determination letters—Correction of disqualification  
defects

§ 10:27 Administrative matters—Excise taxes

## TABLE OF CONTENTS

- § 10:28 Administrative matters—Funding waivers, variances, and related matters
- § 10:29 Administrative matters—Regulations, rulings and general advisory activities
- § 10:30 Administrative matters—Audits and examinations
- § 10:31 Administrative matters—Reporting to Internal Revenue Service
- § 10:32 Practitioner standards and penalties
- § 10:33 Tax litigation relating to employee plans

## **IV. PENSION BENEFIT GUARANTY CORPORATION**

- § 10:38 Regulatory activities in general
- § 10:40 Guaranteed benefits—Single-employer program guaranteed benefits
- § 10:42 Premiums
- § 10:44 Plan termination and insolvency—Single-employer plan terminations
- § 10:45 Plan termination and insolvency—Single-employer plan terminations—Standard terminations
- § 10:46 Plan termination and insolvency—Single-employer plan terminations—Distress terminations
- § 10:47 Plan termination and insolvency—Single-employer plan terminations—Involuntary terminations
- § 10:49 Plan termination and insolvency—Single-employer plan terminations—Allocation of assets and recapture of payments
- § 10:50 Plan termination and insolvency—Multiemployer plan terminations
- § 10:51 Employer liabilities
- § 10:52 Special provisions relating to multiemployer plans and withdrawal liabilities
- § 10:53 Significant transactions involving multiemployer plans
- § 10:54 Administrative enforcement: reporting to PBGC, investigations, and penalties
- § 10:56 Regulations, rulings, and opinion letters
- § 10:57 Trusteeship functions, involuntary terminations, and restorations
- § 10:59 Litigation activities

## **V. MISCELLANEOUS**

- § 10:63 Coordination among agencies

## Volume 2

### CHAPTER 11. LITIGATION INVOLVING EMPLOYEE BENEFIT PLANS

- § 11:1 Scope of chapter
- § 11:2 Proceedings prior to judicial review
- § 11:4 Proceedings prior to judicial review—Claim procedure—  
Statute and regulations
- § 11:5 Proceedings prior to judicial review—Claim procedure—  
The exhaustion doctrine
- § 11:6 Proceedings prior to judicial review—Claim procedure—  
Defects in administering the claim procedure
- § 11:7 Proceedings prior to judicial review—Claim procedure—  
Practical significance
- § 11:8 Proceedings prior to judicial review—Claim procedure—  
Exceptions to exhaustion doctrine
- § 11:9 Proceedings prior to judicial review—Claim procedure—  
Consequences of failure to exhaust
- § 11:10 Proceedings prior to judicial review—Claim procedure—  
Conduct of claim procedure
- § 11:11 Proceedings prior to judicial review—Claim procedure—  
Conduct of claim procedure—Administrator’s  
perspective
- § 11:13 Proceedings prior to judicial review—Claim procedure—  
Labor arbitration as alternative to claim procedure
- § 11:14 Proceedings prior to judicial review—Multiemployer plan  
disputes prior to judicial review
- § 11:16 Proceedings prior to judicial review—Non-labor  
arbitration arrangements
- § 11:17 Proceedings prior to judicial review—Alternative dispute  
resolution
- § 11:18 Parties to a Case or Controversy: constitutional standing,  
mootness, and ripeness
- § 11:19 Parties—Plaintiff status and ERISA standing
- § 11:20 Parties—Participants
- § 11:21 Parties—Beneficiaries
- § 11:22 Parties—Fiduciaries and plans
- § 11:25 Parties—Employers
- § 11:27 Parties—Others
- § 11:28 Parties—Defendant status
- § 11:29 Parties—Class actions and derivative actions
- § 11:30 Jurisdiction
- § 11:31 Jurisdiction—Subject matter jurisdiction
- § 11:34 Jurisdiction—Personal jurisdiction, service of process and  
subpoenas
- § 11:38 Preemption—Judicial interpretations
- § 11:40 Venue—Statutory provisions
- § 11:41 Venue—Litigation aspects

## TABLE OF CONTENTS

- § 11:42 Commencement of proceedings
- § 11:45 Interpleader
- § 11:46 Removal from state court
- § 11:48 Standards of judicial review—Fiduciary breach claims
- § 11:53 Standards of judicial review—Benefit claims—Abuse of discretion standard—Post-Firestone case law
- § 11:54 Standards of judicial review—Benefit claims—Abuse of discretion standard—Procedural aspects
- § 11:55 Standards of judicial review—Benefit claims—De novo standard
- § 11:57 Limitation on actions—Fiduciary breach claims
- § 11:58 Limitation on actions—Benefit claims and other actions under Title I unrelated to § 413 *[Retitled]*
- § 11:60 Limitation on actions—Accrual of cause of action
- § 11:61 Limitation on actions—Tolling of limitation period
- § 11:64 Complaint
- § 11:65 Responsive pleadings
- § 11:66 Magistrate judges
- § 11:67 Discovery practice
- § 11:68 Evidence
- § 11:69 Use of experts
- § 11:70 Privileged communications and other disclosure restrictions
- § 11:71 Consent judgments
- § 11:72 Summary judgment
- § 11:73 Jury trials
- § 11:74 Remedies
- § 11:75 Judgments, res judicata and collateral estoppel
- § 11:77 Award of attorney’s fees—In general
- § 11:78 Award of attorney’s fees—Statutory provisions
- § 11:79 Award of attorney’s fees—Decision to award fees
- § 11:80 Award of attorney’s fees—Fixing amount of fees
- § 11:81 Award of attorney’s fees—Requesting fees and costs—Additional considerations
- § 11:83 Appellate review

## Volume 3

### **CHAPTER 12. BENEFITS RELATED LITIGATION: SPECIFIC SETTINGS AND SELECTED TOPICS**

#### **II. LITIGATION IN SPECIFIC SETTINGS**

- § 12:4 Welfare plan and pension plan controversies
- § 12:5 Multiemployer plan controversies

- § 12:6 Multiemployer plan controversies—Disputes over employer contributions
- § 12:7 Multiemployer plan controversies—Withdrawal liability, employer targets, and objecting to an assessment
- § 12:9 Multiemployer plan controversies—Withdrawal liability—Industry exemptions
- § 12:10 Multiemployer plan controversies—Withdrawal liability—Calculation of withdrawal liability
- § 12:11 Multiemployer plan controversies—Withdrawal liability—Assessment and collection of withdrawal liability; Pay now, dispute later; Defenses to withdrawal liability claims
- § 12:12 Multiemployer plan controversies—Withdrawal liability—Review of liability; Arbitration
- § 12:13 Multiemployer plan controversies—Plan audits and access to information
- § 12:14 Interference with ERISA rights
- § 12:16 Group health plans, COBRA, HIPAA, ACA and related laws—Regulatory aspects
- § 12:23 Multiple employer welfare arrangements (MEWAs)

### **III. SELECTED TOPICS IN BENEFIT PLAN LITIGATION**

- § 12:27 Federal common law issues
- § 12:30 Plan reimbursement and subrogation rights; assignment of benefit claims to service providers
- § 12:34 Disability disputes
- § 12:49 Interpretation of language governing benefits and plans—Laws and regulations

#### **Table of Laws and Rules**

#### **Table of Cases**

#### **Index**