

Table of Contents

CHAPTER 1. COVERAGE UNDER ERISA

- § 1:1 Generally
- § 1:2 What plans are covered by Title I of ERISA
- § 1:3 —Established or maintained by employer or employee organization
- § 1:4 —Employee status
- § 1:5 What kinds of programs are welfare benefit plans or pension plans under Title I of ERISA—Definition of “plan”
- § 1:6 —Employee welfare benefit plans
- § 1:7 —Employee pension benefit plans
- § 1:8 —Unfunded plans
- § 1:9 —Administrative procedures
- § 1:10 What plans are excluded from coverage under Title I of ERISA
- § 1:11 —Unfunded plans
- § 1:12 —Governmental plans
- § 1:13 —Church plans
- § 1:14 —Unfunded excess benefit plans
- § 1:15 —Plans required by state law
- § 1:16 —Foreign plans
- § 1:17 —Plans exempted from ERISA by regulation
- § 1:18 —Payroll practices
- § 1:19 —Group insurance programs
- § 1:20 —On-premises facilities
- § 1:21 —Holiday gifts
- § 1:22 —Sales to employees
- § 1:23 —Hiring halls
- § 1:24 —Remembrance funds
- § 1:25 —Strike funds
- § 1:26 —Industry advancement programs
- § 1:27 —Unfunded scholarship programs
- § 1:28 What requirements apply to ERISA plans
- § 1:29 —Written instrument
- § 1:30 —Claims procedure
- § 1:31 — —Denial of claim
- § 1:32 — —Appeals of adverse benefit determination
- § 1:33 — —Timing of notification of benefit determination
- § 1:34 — —Manner and content of notification of benefit determination on review
- § 1:35 — —Preemption of state law

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 1:36 — —Failure to establish and follow reasonable claims procedures
- § 1:37 —Group health plans
- § 1:38 —Plans providing for disability benefits
- § 1:39 —Fiduciary duties
- § 1:40 —Trust requirements
- § 1:41 —Reporting and disclosure requirements
- § 1:42 —Preemption of state law
- § 1:43 —ERISA enforcement provision
- § 1:44 —Federal common law
- § 1:45 —Plan amendments
- § 1:46 —Termination of plans and reduction of benefits
- § 1:47 When do the participation, vesting and funding requirements of Title I of ERISA apply—Generally
- § 1:48 —ERISA participation requirements
- § 1:49 —ERISA vesting requirements
- § 1:50 —Provisions relating to form and payment of benefits
- § 1:51 — —Alienation of benefits and QDROs
- § 1:52 —ERISA funding requirements
- § 1:53 ERISA preemption
- § 1:54 —When does a state law relate to an ERISA plan—Generally
- § 1:55 — —Health care
- § 1:56 — —Domestic relations orders
- § 1:57 —Exceptions to preemption—Banking, insurance, and securities laws exceptions
- § 1:58 — —Exception for criminal laws
- § 1:59 — —Other federal laws and state laws relating to other federal laws
- § 1:60 — —Coordination of benefits exception
- § 1:61 — —Removal of actions
- § 1:62 Authority to postpone deadlines

CHAPTER 2. FIDUCIARY RESPONSIBILITY

- § 2:1 Generally
- § 2:2 Plan assets—In general
- § 2:3 Requirement of trust for plan assets—Plan assets
- § 2:4 Plan assets—Guaranteed benefit policy
- § 2:5 Fiduciary defined; fiduciary duties; delegation of fiduciary duties—ERISA definition of fiduciary
- § 2:6 —Persons not fiduciaries
- § 2:7 —Employer as fiduciary
- § 2:8 —Prohibition on certain criminals serving as fiduciaries
- § 2:9 —Named fiduciary

TABLE OF CONTENTS

§ 2:10	—Fiduciary duties under Title I of ERISA
§ 2:11	—Duty to act solely in interests of plan participants and beneficiaries
§ 2:12	—Fiduciary Misrepresentations—Failure to make disclosures
§ 2:13	—Specific fiduciary duties
§ 2:14	—Delegation of fiduciary duties
§ 2:15	—Delegation of trustee responsibilities
§ 2:16	—Delegation to non-trustee fiduciaries
§ 2:17	—Liability for breach by co-fiduciary
§ 2:18	Reimbursement of fiduciary and other plan expenses
§ 2:19	Prohibited transactions—Generally
§ 2:20	—Party in interest
§ 2:21	—Prohibited transactions
§ 2:22	Exceptions to prohibited transactions rules
§ 2:23	—Waivers by Treasury and Department of Labor—Statutory authority
§ 2:24	—Streamlined individual exemption procedure
§ 2:25	—Class exemptions
§ 2:26	—Statutory exemptions
§ 2:27	—Loans
§ 2:28	—Services or property between the plan and party in interest
§ 2:29	—Qualifying employer securities or real property
§ 2:30	—Distribution of benefits
§ 2:31	—Inapplicability of exemptions to owner-employee and shareholder-employee plans
§ 2:32	Exceptions for qualifying employer securities and real property
§ 2:33	—Employer securities and qualifying employer securities
§ 2:34	—Employer real property and qualifying employer real property
§ 2:35	—Acquiring qualifying employer securities and qualifying employer real property
§ 2:36	Fiduciary liability, indemnification, and bonding
§ 2:37	—Fiduciary liability
§ 2:38	—Indemnification
§ 2:39	—Bonding
§ 2:40	Voluntary fiduciary compliance—Advantages and disadvantages of program
§ 2:41	—Eligibility for VFC
§ 2:42	—Permissible methods of correction
§ 2:43	IRC Section 4965 excise tax

CHAPTER 3. PRINCIPAL LAWS OTHER THAN ERISA AFFECTING WELFARE AND FRINGE BENEFIT PLANS

- § 3:1 Generally
- § 3:2 Discrimination based on age
- § 3:3 —Age Discrimination in Employment Act (ADEA)
- § 3:4 —Age Discrimination in Employment Act—Key elements of ADEA
- § 3:5 — — —Bona fide employee benefit plan
- § 3:6 — — —Terms of plan observed
- § 3:7 — — —Equal cost or payments/voluntary early retirement incentive plan
- § 3:8 — — —No involuntary retirement
- § 3:9 — — —Effect of ADEA on specific types of employee benefit programs—Age related reductions in benefit accruals
- § 3:10 — — —Severance benefits
- § 3:11 — — —Early retirement incentive programs
- § 3:12 — — —Disability benefits
- § 3:13 — — —Health benefits
- § 3:14 — — —Waivers and releases
- § 3:15 — — —Exception for executives
- § 3:16 — — —Records
- § 3:17 — — —Actions and recoveries under ADEA—Burden of Proof
- § 3:18 — — —Actions and recoveries under ADEA—Remedies
- § 3:19 — — —Tax treatment of award
- § 3:20 Discrimination based on race, sex, pregnancy, or other factors
- § 3:21 —Title VII of the Civil Right Act of 1964
- § 3:22 —Equal Pay Act
- § 3:23 —Executive Order 11246
- § 3:24 —Tax treatment of award
- § 3:25 Discrimination based on disabilities—Background—Laws other than the Americans with Disabilities Act
- § 3:26 —Overview of the Americans with Disabilities Act (ADA)
- § 3:27 —Summary of ADA Title I, discrimination in employment practices—Prohibition against discrimination
- § 3:28 — —Definitions
- § 3:29 — —Other employment-related features of ADA Titles I and V
- § 3:30 —Procedures and remedies

TABLE OF CONTENTS

§ 3:31	—Benefit plan issues under the ADA
§ 3:32	— —Benefit plans and employment opportunities
§ 3:33	— —Equal access to benefits
§ 3:34	— —Permissible bases for denial or limitation of coverage, or rate differentials
§ 3:35	— —Disability-based distinctions
§ 3:36	— —Disability retirement plans and service retirement plans
§ 3:37	— —Coverage of dependents
§ 3:38	—Summary of ADA Title II
§ 3:39	Family and Medical Leave Act (FMLA)—Overview
§ 3:40	Family and Medical Leave Act—Brief history
§ 3:41	—Employers affected
§ 3:42	—Eligible employees
§ 3:43	—Durations and types of leave—Generally
§ 3:44	— —Serious health condition
§ 3:45	—Restoration of employment
§ 3:46	— —Equivalent position requirement
§ 3:47	— —Exception for key employees
§ 3:48	—Notice requirements—Employer notice requirements
§ 3:49	— —Employee notice requirements
§ 3:50	—Computation of leave
§ 3:51	—Coordination with other leave
§ 3:52	—Employer credit for paid family and medical leave
§ 3:53	—Employee benefits—Medical coverage
§ 3:54	— —Cafeteria plans
§ 3:55	— —COBRA health continuation coverage
§ 3:56	—Educational institutions
§ 3:57	—Multiemployer plans
§ 3:58	—Enforcement—Retaliation
§ 3:59	— —Enforcement and penalties
§ 3:60	—Effect on other laws
§ 3:61	Coronavirus Acts—Families First Coronavirus Response Act
§ 3:62	—CARES Act
§ 3:63	Other laws affecting employee benefit programs and employment practices
§ 3:64	—State laws
§ 3:65	—Veterans’ rights
§ 3:66	— —Discrimination
§ 3:67	— —Eligibility for reemployment and benefits rights
§ 3:68	— —Reemployment rights
§ 3:69	— —Pension benefits
§ 3:70	— —Health plans
§ 3:71	— —Notice requirement

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 3:72 — —TRICARE
- § 3:73 — —Miscellaneous
- § 3:74 — —Loans
- § 3:75 —Labor Management Relations Act
- § 3:76 —Bankruptcy
- § 3:77 —WARN

CHAPTER 4. FRINGE BENEFIT PLANS

- § 4:1 Generally
- § 4:2 Fringe benefits under IRC Section 132
- § 4:3 —No-additional-cost service
- § 4:4 —Qualified employee discount
- § 4:5 —Working condition fringe
- § 4:6 —De minimis fringe
- § 4:7 —Qualified transportation fringe
- § 4:8 —On-premises athletic facilities
- § 4:9 Employer provided meals and lodging under IRC Section 119
- § 4:10 —Employer provided meals
- § 4:11 —Employer provided lodging
- § 4:12 Employee awards under IRC Section 74
- § 4:13 Educational assistance programs
- § 4:14 —Qualified tuition reduction
- § 4:15 —Education assistance programs
- § 4:16 Qualified moving expense reimbursement
- § 4:17 Employer adoption assistance programs
- § 4:18 Family building benefits programs

CHAPTER 5. COMPENSATORY TRANSFERS OF RESTRICTED STOCK AND OTHER PROPERTY UNDER IRC SECTION 83

- § 5:1 Section 83 and restricted stock grants
- § 5:2 Transfer of property in connection with performance of services
- § 5:3 Substantial risk of forfeiture
- § 5:4 Nonlapse restrictions
- § 5:5 Section 83(b) election
- § 5:6 Employer deduction
- § 5:7 Transfers of nonvested property
- § 5:8 Transfer by shareholder or parent
- § 5:9 Applicability of Section 83 to stock options
- § 5:10 IRC § 409A and compensatory transfers of property

CHAPTER 6. NONQUALIFIED DEFERRED COMPENSATION

- § 6:1 Generally
- § 6:2 IRC Section 409A
- § 6:3 —Non-qualified deferred compensation plan defined
- § 6:4 —Tax consequences
- § 6:5 —Plan document requirements
- § 6:6 —Requirements for compliance—Deferral elections
- § 6:7 — —Distributions
- § 6:8 — —Separation from service
- § 6:9 — —Disability
- § 6:10 — —Specified time or fixed schedule
- § 6:11 — —Change in control
- § 6:12 — —Subsequent changes in time and form of payment
- § 6:13 — —Termination of plans subject to IRC § 409A
- § 6:14 —Offshore trust
- § 6:15 —Correction of compliance failures
- § 6:16 IRC Section 457A deferred compensation with respect to nonqualified entities
- § 6:17 Tax factors—Employee tax factors other than IRC Section 409A—Constructive receipt
- § 6:18 Tax factors—Employee tax factors other than IRC Section 409A—Economic benefit doctrine
- § 6:19 — —Section 83
- § 6:20 — —Distributions taxed under Section 72
- § 6:21 — —Employment taxes
- § 6:22 — —Withholding
- § 6:23 — —Estate and gift tax
- § 6:24 —Employer tax factors—Generally
- § 6:25 — —Nondeductibility of compensation in excess of \$1,000,000
- § 6:26 — —Nondeductibility of compensation in excess of \$500,000 under Emergency Economic Stabilization Act of 2008
- § 6:27 — —Income on compensatory transfers of property
- § 6:28 —Taxation of income of funded plan
- § 6:29 ERISA Title I factors
- § 6:30 —Top hat plans
- § 6:31 —Excess benefit plans
- § 6:32 Types of plans
- § 6:33 —Unfunded deferred compensation agreements
- § 6:34 — —Income deferral
- § 6:35 — —Retention agreements or rewards for meeting long term performance goals

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 6:36 — —Excess benefit plan
- § 6:37 — —Supplemental executive retirement plan (SERP)
- § 6:38 — —Paying for deferred compensation arrangements
- § 6:39 — —Rabbi trusts and related arrangements
- § 6:40 — —Secular trusts and related arrangements
- § 6:41 — —Secular annuity
- § 6:42 — —Vesting trust or Section 83 trust
- § 6:43 — —Severance trust executive programs
- § 6:44 — —Third party guarantees
- § 6:45 State and local governments and tax-exempt organizations—Generally
- § 6:46 — —Internal Revenue Code requirements
- § 6:47 — —Coverage limited to employees and independent contractors
- § 6:48 — —Limitation on deferrals
- § 6:49 — —Catch-up deferrals
- § 6:50 — —Deferral agreement
- § 6:51 — —Time of distribution
- § 6:52 — —\$5,000 cash out
- § 6:53 — —Loans to participants
- § 6:54 — —Trust for governmental plan; plan assets property of employer for tax-exempt entity
- § 6:55 — —Plan to plan transfers
- § 6:56 — —Penalty and excise taxes
- § 6:57 — —Failure to meet § 457 requirements
- § 6:58 — —QDROs
- § 6:59 — —Rollover provisions
- § 6:60 — —ERISA Title I and Title IV requirements
- § 6:61 — —Tax treatment of distributions
- § 6:62 — —Defective Section 457 plans
- § 6:63 — —Qualified governmental excess benefit arrangement

CHAPTER 7. STOCK OPTION AND STOCK PLANS

- § 7:1 Generally
- § 7:2 Non-qualified stock option plans—Generally
- § 7:3 — —Tax treatment—NQSO
- § 7:4 — —NQSO contrasted with ISO
- § 7:5 — —Section 16(b) of the Securities Exchange Act of 1934
- § 7:6 Incentive stock option plans—Generally
- § 7:7 — —Requirements
- § 7:8 — —Tax treatment
- § 7:9 — —Reporting requirements
- § 7:10 — —Section 16(b) of the Securities Exchange Act of 1934

TABLE OF CONTENTS

§ 7:11	Stock appreciation rights—Generally
§ 7:12	—Taxation
§ 7:13	—Section 16(b) of the Securities Exchange Act of 1934
§ 7:14	Restricted stock and qualified stock purchase plans
§ 7:15	—Restricted stock
§ 7:16	—Qualified stock plans—Employee stock purchase plans under IRC § 423
§ 7:17	— — —Reporting requirements
§ 7:18	Qualified Equity Grants
§ 7:19	Phantom stock plans—Generally
§ 7:20	—Taxation
§ 7:21	—Section 16(b) of the Securities Exchange Act of 1934
§ 7:22	Performance unit and performance share plans—Generally
§ 7:23	—Taxation
§ 7:24	—Section 16(b) of the Securities Exchange Act of 1934
§ 7:25	Section 16 of the Securities Exchange Act of 1934
§ 7:26	—The Section 16 Rules—Options and other derivative securities
§ 7:27	— —Rule 16b-3 exemption
§ 7:28	— —Rule 16b-3
§ 7:29	— —Other exemptions
§ 7:30	— —Table showing application of Section 16 Rules

CHAPTER 8. MULTIPLE EMPLOYER TRUSTS AND MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

§ 8:1	Generally
§ 8:2	Multiple employer trusts (METs)
§ 8:3	Multiple employer welfare arrangements (MEWAs)—Definition
§ 8:4	— —Employee welfare benefit plan or other arrangement
§ 8:5	— —Employer organization
§ 8:6	— —Employee organization
§ 8:7	—Regulation of MEWAs
§ 8:8	Administrative procedure for DOL cease and desist orders and seizure of assets
§ 8:9	Multiple employer welfare arrangements (MEWAs)—Reporting requirements

CHAPTER 9. DEDUCTIONS AND TAXATION WITH RESPECT TO FUNDED WELFARE BENEFIT PLANS

§ 9:1	Generally
-------	-----------

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 9:2 Deductions by employer
- § 9:3 —Welfare benefit fund defined
- § 9:4 —Deduction for contributions to a welfare benefit fund
- § 9:5 —Limitations on additions to qualified asset accounts
- § 9:6 —Section 419A(f)(6) plans
- § 9:7 — —Prime Trust case
- § 9:8 — —Booth case
- § 9:9 — —Neonatology Associates case
- § 9:10 — —PLR 200127047
- § 9:11 — —Cadwell case
- § 9:12 Actions against promoters of 419A(f)(6) plans
- § 9:13 Deductions by employer—Section 419A(f)(6) plans—
Curcio case
- § 9:14 —Other life insurance plans
- § 9:15 —Section 419A(f)(5) plans
- § 9:16 —Separate accounts for key employees
- § 9:17 Income tax treatment of fund
- § 9:18 —Tax-exempt trust
- § 9:19 —Prohibited transactions under IRC § 503
- § 9:20 Unrelated business taxable income
- § 9:21 Excise tax
- § 9:22 Tax shelter litigation

CHAPTER 10. HEALTH PLANS

- § 10:1 Generally
- § 10:2 Same-sex marriage
- § 10:3 Tax treatment of medical benefits
- § 10:4 —Self-insured medical reimbursement plan
- § 10:5 —Deduction to employer
- § 10:6 —Funding
- § 10:7 —Health Reimbursement Accounts (HRAs)—
Generally
- § 10:8 Coverage under Health Insurance Portability and
Accountability Act (HIPAA)—Group health plans
- § 10:9 —Qualified small employer health reimbursement
arrangement (QSEHRA)
- § 10:10 —Excepted Benefits HRA
- § 10:11 —Individual Coverage HRA
- § 10:12 Tax treatment of medical benefits—Health
Reimbursement Arrangements (HRAs)—
Limitations under the ACA
- § 10:13 —Health Reimbursement Accounts (HRAs)—
Substantiation of expenses
- § 10:14 Health Savings Accounts (HSAs)—Requirements
and tax treatment to HSA owners

TABLE OF CONTENTS

§ 10:15	—Distribution from HSAs
§ 10:16	—Employer contributions and comparability
§ 10:17	—Requirements and tax treatment—One time transfer allowed
§ 10:18	—Qualified medical expenses
§ 10:19	—ERISA coverage
§ 10:20	—Transition relief (2004/2005)
§ 10:21	Health Savings Accounts—High Deductible Health Plan (HDHP)
§ 10:22	Prescription drugs
§ 10:23	Archer Medical Savings Accounts (MSAs)—Overview
§ 10:24	—Eligible individual
§ 10:25	—Medical savings account
§ 10:26	—Tax treatment of MSAs
§ 10:27	—Employer contributions
§ 10:28	—Employee tax treatment
§ 10:29	—Reports
§ 10:30	—Medicare + Choice MSAs for Medicare eligible individuals
§ 10:31	Coverage under Health Insurance Portability and Accountability Act (HIPAA)
§ 10:32	—Group health plans
§ 10:33	—Supplemental health insurance
§ 10:34	—Limitations on preexisting conditions, eligibility to enroll and premiums
§ 10:35	—Special enrollment periods
§ 10:36	—Creditable coverage
§ 10:37	—Multiemployer plans and MEWAs
§ 10:38	—Failure of employer to meet certain group health plan requirements
§ 10:39	—Effect of ERISA Part 7 on state law
§ 10:40	—Domestic partners
§ 10:41	Association health plans
§ 10:42	PEO health plans
§ 10:43	Children’s Health Insurance Program (CHIP)
§ 10:44	HIPAA privacy regulations—Overview
§ 10:45	— —Privacy Rule
§ 10:46	—Minimum necessary disclosure
§ 10:47	—Exceptions to general rule of nondisclosure
§ 10:48	— —Required disclosures
§ 10:49	— —Permissive disclosures
§ 10:50	— —Authorizations
§ 10:51	—Special disclosure rules—Employers and other plan sponsors
§ 10:52	—Business associates

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 10:53 —Disclosures to workers' compensation carriers and other non-covered insurance entities
- § 10:54 —Individual rights
- § 10:55 —Access to protected health information
- § 10:56 — —Conditions of access
- § 10:57 — —Right of review
- § 10:58 — —Documenting request for access
- § 10:59 —Administrative rules
- § 10:60 —Preemption
- § 10:61 —Enforcement
- § 10:62 —Effective dates
- § 10:63 Security rules
- § 10:64 The Genetic Information Antidiscrimination Act of 2008 (GINA)
- § 10:65 COBRA—Generally
- § 10:66 — —20 employees
- § 10:67 — —Qualifying event
- § 10:68 — —Election period
- § 10:69 — —Coverage period
- § 10:70 — —Cost of coverage
- § 10:71 —COBRA general notice
- § 10:72 —Occurrence of qualifying event and notice of right to elect COBRA coverage—Notice to or from qualified beneficiary
- § 10:73 — —Election by qualified beneficiary
- § 10:74 —Business reorganizations consisting of stock or asset sales
- § 10:75 —Private right of action
- § 10:76 —Excise tax
- § 10:77 —Subsidized COBRA coverage
- § 10:78 —Trade Act of 2002 health and COBRA coverage
- § 10:79 Qualified medical child support orders
- § 10:80 Other laws concerning health benefits—ERISA
- § 10:81 —Retiree health benefits under IRC § 401(h)
- § 10:82 Other laws concerning health benefits—Newborns' and Mothers' Health Protection Act of 1996, Mental Health Parity Act of 1996, and Mental Health and Addiction Equity Act of 2008
- § 10:83 Other laws concerning health benefits—Women's Health and Cancer Rights Act of 1998
- § 10:84 —Families First Coronavirus Response Act
- § 10:85 —CARES Act
- § 10:86 —Extension of claims and appeals for COBRA and other health benefit claims
- § 10:87 —Title VII of the Civil Rights Act

TABLE OF CONTENTS

§ 10:88	—Social Security Act
§ 10:89	—Transmission of confidential medical information
§ 10:90	—Tax credit under Trade Act of 2002
§ 10:91	—Families First Coronavirus Response Act
§ 10:92	Managed care and other health care financing options
§ 10:93	—Health care financing options available to employers
§ 10:94	—Distinguishing features of each health benefit alternative
§ 10:95	—Cost reduction techniques
§ 10:96	—Factors to consider in choosing an insurer, HMO or PPO
§ 10:97	—Statutory and regulatory requirements affecting employee health care programs
§ 10:98	—Protection against legal liability in connection with a managed care program for health care services
§ 10:99	—Managed care litigation
§ 10:100	— —Fiduciary breach claims
§ 10:101	— —Misconduct claims
§ 10:102	— —Quality of medical care claims
§ 10:103	— —Claims based on faulty administration
§ 10:104	— —Litigation involving state statutes
§ 10:105	—Minimizing the legal risks
§ 10:106	—Medicare
§ 10:107	—Health care purchasing pools
§ 10:108	—Health care providers
§ 10:109	—Measuring health plan quality
§ 10:110	—Increased activity in purchasing cooperatives at state and local levels
§ 10:111	—Key elements for employees to consider when buying health benefit coverage for employees
§ 10:112	Coverage and coordination of benefits
§ 10:113	—Plan language
§ 10:114	Subrogation and reimbursement
§ 10:115	Coverage and coordination of benefits—Coordination with FMLA
§ 10:116	—Coordination with Medicare
§ 10:117	— —Discrimination
§ 10:118	— —Medicare as secondary payor
§ 10:119	Retiree health benefits
§ 10:120	Requirements imposed on insurers—Overview
§ 10:121	—Group health insurance
§ 10:122	—Individual health insurance

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 10:123 Accounting treatment of medical benefits (FAS 106)
- § 10:124 —Scope
- § 10:125 —Accounting concept
- § 10:126 —Measurement
- § 10:127 — —Benefit plan design
- § 10:128 — —Industry factors
- § 10:129 — —Geographic location
- § 10:130 — —Retiree demographics and the effects of aging
- § 10:131 — —Spouse and dependent coverage
- § 10:132 — —Delivery system
- § 10:133 — —Coordination with Medicare
- § 10:134 — —Health care cost trend rate (gross eligible charges trend rate)
- § 10:135 —Funding
- § 10:136 Qualified long-term care
- § 10:137 —Deduction of long-term care premiums
- § 10:138 —Long-term care insurance contract
- § 10:139 —Taxation of aggregate payments in excess of per diem limitation
- § 10:140 —Consumer protection provisions required to be in qualified long-term care insurance contracts
- § 10:141 —Long-term care services
- § 10:142 —Reports
- § 10:143 Coronavirus
- § 10:144 Surprise billing for emergency out-of-network services
- § 10:145 Contraception coverage
- § 10:146 Cross plan offsetting

CHAPTER 10A. PATIENT PROTECTION AND AFFORDABLE CARE ACT

- § 10A:1 Summary of Patient Protection and Affordable Care Act of 2010 (ACA)
- § 10A:2 Requirement for individuals to maintain minimum essential coverage
- § 10A:3 Coverage of dependent children until age 26 for group health plans and health insurance; coverage until age 27 for health coverage under the Internal Revenue Code
- § 10A:4 Small employer tax credit
- § 10A:5 Penalty for large employer failing to provide minimum essential coverage
- § 10A:6 Minimum essential coverage, essential health benefits, and excepted benefits
- § 10A:7 Premium Assistance Tax Credits and Cost Sharing for Eligible Employees through the Exchange

TABLE OF CONTENTS

§ 10A:8	Grandfathered plans
§ 10A:9	Patient's Bill of Rights provisions: pre-existing condition exclusions, lifetime and annual dollar limits on benefits, rescissions under health insurance policies, other patient protections
§ 10A:10	Permissible 90-day maximum waiting period
§ 10A:11	Preventive health services—Avoidance of co-pays and deductibles
§ 10A:12	Wellness programs
§ 10A:13	Overseas employees and expatriate health plans
§ 10A:14	Internal and external claims procedures
§ 10A:15	External review procedure for self-insured plans
§ 10A:16	Summary of benefits and coverage
§ 10A:17	Employer and insurer reporting requirements
§ 10A:18	Insurance Exchanges, SHOP, and CO-Ops
§ 10A:19	Requirement that group health insurers provide direct care with 80% or 85% of premiums
§ 10A:20	Fees to support Patient Centered Outcomes Research Trust Fund
§ 10A:21	Modifications and exemptions for religious employers and eligible religious organizations
§ 10A:22	ACA Constitutionality Litigation and Interpretation of ACA
§ 10A:23	Whistleblower and retaliation protections for employees

CHAPTER 11. LIFE INSURANCE AND OTHER DEATH BENEFITS

§ 11:1	Generally
§ 11:2	Tax treatment of life insurance
§ 11:3	—Definition of life insurance
§ 11:4	—Taxation of death benefits
§ 11:5	—Terminally or chronically ill individuals
§ 11:6	—Estate taxes
§ 11:7	—Gift taxes
§ 11:8	—Tax treatment of policy earnings
§ 11:9	—Interest deduction
§ 11:10	—Policy loans
§ 11:11	—Deduction for premium payments
§ 11:12	—Tax treatment of policy dividends
§ 11:13	—Surrender of policy
§ 11:14	—Maturity of policy
§ 11:15	—Tax treatment of lifetime distributions
§ 11:16	—Amounts received as annuities
§ 11:17	—Amounts not received as annuities

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 11:18 —Required distribution rules
- § 11:19 —Income tax treatment to employee
- § 11:20 —Substitution of insurance
- § 11:21 —Valuation of life insurance contract
- § 11:22 Types of insurance arrangements
- § 11:23 —Employee owned insurance
- § 11:24 —Split-dollar plans
- § 11:25 — —Regulations
- § 11:26 — —Tax consequences
- § 11:27 — —Estate tax consequences
- § 11:28 —Reverse split-dollar
- § 11:29 —Employer owned
- § 11:30 Types of life insurance arrangements—Death benefits
from company owned life insurance
- § 11:31 Types of insurance arrangements—Group term life
insurance—Requirements
- § 11:32 — —Tax consequences
- § 11:33 Effects of ERISA on state law

CHAPTER 12. DISABILITY PLANS

- § 12:1 Generally
- § 12:2 Tax aspects
- § 12:3 —Tax treatment to employee of coverage
- § 12:4 —Tax treatment to employee of benefits
- § 12:5 —Tax credit for totally and permanently disabled
retirees
- § 12:6 —Tax deduction for employer
- § 12:7 Nontax laws—ERISA
- § 12:8 —ADEA
- § 12:9 —Title VII
- § 12:10 —ADA
- § 12:11 Plan design

CHAPTER 13. DEPENDENT CARE PROGRAMS

- § 13:1 Generally
- § 13:2 Dependent care programs under IRC § 129
- § 13:3 —Requirements of dependent care assistance program
- § 13:4 —Additional requirements and limitations
- § 13:5 Dependent care tax credit

CHAPTER 14. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATIONS (VEBAS)

- § 14:1 Generally

TABLE OF CONTENTS

- § 14:2 Is a VEBA advisable?
- § 14:3 Requirements of a VEBA
- § 14:4 —Employees' association and nondiscrimination
- § 14:5 —Membership voluntary
- § 14:6 —Provide life, sick, accident or other benefits
- § 14:7 —No inurement to private shareholder or individual
- § 14:8 —Record keeping

CHAPTER 15. CAFETERIA PLANS

- § 15:1 Generally
- § 15:2 What is a cafeteria plan and what benefits can it provide
- § 15:3 Requirements for a cafeteria plan—Requirements
- § 15:4 — —Employees
- § 15:5 — —Written plan
- § 15:6 — —Nondiscrimination
- § 15:7 —Changes in cafeteria plan elections
- § 15:8 — —Special enrollment rights
- § 15:9 — —Changes in status
- § 15:10 — —Judgments, decrees, or orders
- § 15:11 — —Entitlement to Medicare or Medicaid
- § 15:12 — —Allowed to elect health coverage on an exchange
- § 15:13 — —Family and Medical Leave Act
- § 15:14 — —Elective contributions under a qualified cash or deferred arrangement
- § 15:15 —Flexible spending arrangements
- § 15:16 —Flexible spending arrangements as impacted by the ACA
- § 15:17 —Distributions to qualified reservist of flexible spending arrangements
- § 15:18 —Substantiation of expenses for cafeteria plans and FSAs
- § 15:19 Simple cafeteria plans
- § 15:20 ERISA
- § 15:21 Practical concerns

CHAPTER 16. ENFORCING PARTICIPANT'S AND OTHERS' RIGHTS

- § 16:1 Generally
- § 16:2 Civil enforcement provisions
- § 16:3 —Parties who may bring on action under ERISA
- § 16:4 —Federal common law
- § 16:5 —Action for benefits due, to enforce rights under plan, or to clarify rights to future benefits

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 16:6 —Action for equitable relief
- § 16:7 —Action for breach of fiduciary duty
- § 16:8 —Action for failure to report benefit rights
- § 16:9 —Action for statutory penalty for nondisclosure
- § 16:10 —Actions against the Secretary of Labor
- § 16:11 —Action to collect excise tax on prohibited transactions
- § 16:12 —Action to enforce qualified medical child support order
- § 16:13 —Action to enforce data bank reporting requirements
- § 16:14 —Action to protect insurance and annuity benefits
- § 16:15 —Employee benefit plan as entity
- § 16:16 Actions under federal law
- § 16:17 Interference with protected rights
- § 16:18 Liability for breaches of fiduciary duty
- § 16:19 Liability for failure to provide plan documents
- § 16:20 Liability for delinquent contributions
- § 16:21 Civil penalties
- § 16:22 Administrative review and exhaustion of plan remedies
- § 16:23 Jurisdiction and venue
- § 16:24 Service of process
- § 16:25 Jury trial
- § 16:26 Standard of review—Firestone v. Bruch
- § 16:27 —Aftermath of Firestone v. Bruch
- § 16:28 — —Discretion granting language
- § 16:29 — —Controlling document
- § 16:30 — —Factual determinations
- § 16:31 — —Rules of construction
- § 16:32 — —De novo review
- § 16:33 — —Abuse of discretion review
- § 16:34 — —Decision not made by proper fiduciary
- § 16:35 — —Delegation of authority
- § 16:36 — —Abdication of authority
- § 16:37 — —Improper meeting
- § 16:38 — —Flagrant procedural violations
- § 16:39 — —Deemed denial
- § 16:40 — —Legal questions
- § 16:41 Effect of other determinations on plan administrator determinations
- § 16:42 Statute of limitations
- § 16:43 —Breaches of fiduciary duty
- § 16:44 —Actions for benefits and to clarify plan rights
- § 16:45 —Action for failure to provide plan documents
- § 16:46 —Action for delinquent contributions

TABLE OF CONTENTS

§ 16:47	—Action for violation of protected rights
§ 16:48	—Equitable tolling
§ 16:49	Remedies—Benefits
§ 16:50	—Injunctive and other equitable relief
§ 16:51	—Damages
§ 16:52	—Extracontractual damages
§ 16:53	—Punitive damages
§ 16:54	—Restitution
§ 16:55	—Equitable estoppel
§ 16:56	—Constructive trust
§ 16:57	—Prejudgment interest
§ 16:58	—Contribution and indemnity
§ 16:59	—Appointment of receiver
§ 16:60	Attorney fees
§ 16:61	Department of Labor investigations
§ 16:62	Releases
§ 16:63	Criminal penalties for reporting and disclosure violations
§ 16:64	Nonfiduciary liability
§ 16:65	Domestic relations matters
§ 16:66	Claims by creditors—Claims against participant’s interest
§ 16:67	—Claims against the plan
§ 16:68	Waiver, estoppel, oral statements and modifications
§ 16:69	Attorney-client privilege and work product doctrine
§ 16:70	Negligence and other torts
§ 16:71	Sanctions
§ 16:72	Affirmative defenses
§ 16:73	Appellate standard and timing of review
§ 16:74	Ethics
§ 16:75	Shareholder liability
§ 16:76	Successor liability
§ 16:77	Class actions
§ 16:78	—Prerequisites for class action
§ 16:79	— —Numerosity
§ 16:80	— —Adequacy of representation
§ 16:81	— —Typicality
§ 16:82	— —Commonality
§ 16:83	—Allowable types of lawsuits—Risk of inconsistent results
§ 16:84	— —Generally applicable action
§ 16:85	—Allowable type of lawsuit—Common questions of law and fact
§ 16:86	—Other aspects
§ 16:87	Arbitration agreements

EMPLOYEE FRINGE & WELFARE BENEFIT PLANS

- § 16:88 —Group health and disability plan
- § 16:89 —Gateway issues
- § 16:90 Defense of Marriage Act

CHAPTER 17. REPORTING AND DISCLOSURE

- § 17:1 Generally
- § 17:2 Exempted plans
- § 17:3 —Top hat plans
- § 17:4 —Day care centers
- § 17:5 —Dues financed welfare plans and pension plans maintained by employee organizations
- § 17:6 —Plans specified by the Department of Labor
- § 17:7 Disclosure requirements
- § 17:8 —Summary annual report
- § 17:9 —Summary plan description
- § 17:10 —Summary of material modification
- § 17:11 —Statement of benefits
- § 17:12 —Duty to disclose information on request
- § 17:13 —Reduction in benefits
- § 17:14 —Electronic disclosure
- § 17:15 Reporting requirements
- § 17:16 —Annual report
- § 17:17 —Filings with Department of Labor
- § 17:18 —Filings Required under the Affordable Care Act (ACA)
- § 17:19 —Sanctions for failure to file annual report
- § 17:20 —Criminal sanctions
- § 17:21 —Civil sanctions
- § 17:22 Delinquent Filer Voluntary Compliance Program (DFVCP)
- § 17:23 Notice of blackout periods

CHAPTER 18. SEVERANCE PLANS AND GOLDEN PARACHUTE PAYMENTS

- § 18:1 Generally
- § 18:2 Coverage under Title I of ERISA
- § 18:3 Severance plan litigation in general
- § 18:4 ADEA
- § 18:5 Golden parachutes
- § 18:6 —Taxation of excess parachute payments
- § 18:7 —Emergency Economic Stabilization Act and TARP

APPENDICES(MODEL PLANS)

Appendix A. Deferred Compensation and Retirement Plan

TABLE OF CONTENTS

Appendix B.	Long-term Incentive Plan
Appendix C.	Excess Benefit Plan
Appendix D.	Rabbi Trust
Appendix E.	Trust Agreement For <i>[Employer]</i> Excess Benefit Plan/Supplemental Executive Retirement Plan
Appendix F.	Group Health Plan and Summary Plan Description
Appendix G.	Group Term Life Insurance Plan and Summary Plan Description
Appendix H.	Cafeteria Plan
Appendix I.	Dependent Care Reimbursement Account Plan
Appendix J.	Health Care Reimbursement Account Plan for Employees
Appendix K.	Summary Plan Description for <i>[Employer]</i> Cafeteria Plan
Appendix L.	Pretax Premium Plan
Appendix M.	Golden Parachute Agreement
Appendix N.	Resolutions and Transmittal Letters
Appendix O.	COBRA Notice
Appendix P.	Child Medical Support Order
Appendix Q.	Cross-Reference Table of ERISA Sections to USCA Sections

Table of Laws and Rules

Table of Cases

Index