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## WHAT ERISA MEANS FOR YOUR RETIREMENT PLAN



By: E. Napoletano - April 6, 2021

The Employee Retirement Income Security Act (ERISA) of 1974 establishes minimum standards for retirement and health plans in the private sector. With ERISA, Congress enacted tax and labor standards for employer benefit plans, to protect employees.

### What Is ERISA?

ERISA is a federal law enforcing minimum standards for most retirement and health plans in the private sector. Administered by the Department of Labor, it covers both defined benefit plans—commonly known as pensions—and defined contribution plans like the 401(k).

“Before ERISA, there was little federal protection for employees covered by corporate retirement plans,” says Kristen Ventre, Senior Vice President of Retirement Plan Services at Girard Advisory Services, LLC. Employers could revoke retirement and pension promises in the blink of an eye, without any legal repercussions.

The passage of this landmark reform to the U.S. retirement system was inspired by the collapse of the automaker Studebaker. Labor trouble and financial mismanagement in the post-World War II period led to the decline of the company, which in 1963 shuttered its manufacturing plant in South Bend, Ind.

Almost 70% of Studebaker’s workers were left without their promised retirement benefits after the plant was closed. Of approximately 10,500 current and former employees in the pension plan, about 4,000 with more than 20 years of history at the company received only about 15 cents for each dollar they expected. Almost 3,000 shorter tenured employees got nothing.

### How Does ERISA Work?

ERISA established minimum requirements that retirement and healthcare plans are required to meet to protect workers and plan beneficiaries. ERISA does not require employers to offer plans; it merely sets the standards if they do.

“ERISA requires the managers of the plan to be held to a higher standard when managing the assets of client accounts,” says Lisa Baumburg, co-owner of Insurance Advantage and LMA Financial Services.

While by no means exhaustive, here are some of the areas in which ERISA law sets standards for employers and plan administrators:

- **Reporting.** Plan administrators are held accountable through detailed reporting due annually to the federal government.
- **Protection.** The law lays out how assets in retirement plans are protected and how plan participants can have grievances addressed.
- **Plan participation.** The law specifies anti-discrimination regulations on plan participation. For example, high earners often cannot contribute a significantly higher proportion of their salaries than low earners.
- **Fiduciary standards.** The law dictates that plan administrators act in employees’ best interests, not their own.
- **Information disclosures.** All plan participants must be provided specific standardized information about their plans.

### ERISA and Retirement Plans

ERISA’s rules cover most private-sector, employer-sponsored retirement plans, like 401(k)s, pensions, profit-sharing plans and individual retirement accounts (IRAs) offered by employers, such as SEP IRAs and SIMPLE IRAs.

For ERISA plans, employers and plan administrators must:

- Provide specific information to all plan participants, including eligibility, fund matching guidelines, vesting rules and guidelines for withdrawing funds and receiving spousal benefits.
- Act in the investors’ best interests, not their own. ERISA says that plan administrators may be responsible for making up for plan losses due to mismanagement.

In addition, ERISA retirement plans generally offer more protection from creditors than non-ERISA plans. This means if you file for bankruptcy, your retirement savings are probably safer in an ERISA plan.

Not all employer-sponsored plans must comply with all or parts of ERISA, however. These include government employee plans and some plans offered by nonprofits, like 403(b) plans.

But just because a plan falls outside of ERISA governance doesn’t mean it’s risky or will be mismanaged. There could be perfectly valid reasons for your employer to offer you a non-ERISA plan.

Nonprofits might, for instance, opt out of ERISA to save on the costs or administrative work required by ERISA plans. In addition, if you’re a high earner, your company might offer you a non-ERISA plan to avoid violating ERISA non-discrimination policies while allowing you to save more for retirement.

If you’re concerned about the safety of the investment options offered by a non-ERISA plan, you can reduce your risk by choosing a low-fee index fund within your plan,

says Juan Carlos Cruz, founder of Britewater Financial Group.

### ERISA and Healthcare Plans

ERISA also governs some of the most wide-reaching expansions of care in the U.S. healthcare system. According to the Department of Labor’s last reported statistics, more than 136 million people in the U.S. are covered by ERISA-governed healthcare plans.

“ERISA covers almost all private-sector healthcare plans,” says Anderson Lafontant of Miracle Mile Advisors.

That said, the word to keep in mind with ERISA and healthcare is “voluntary.” If a healthcare plan has mandatory participation, receives employer contributions toward premium costs or dictates how funds in the plan must be used, those plans will fall under ERISA guidance. (And in contrast, plans without these mandates would not be subject to ERISA requirements.)

As with retirement plans, ERISA-governed healthcare plans must lay out benefits and rules for eligibility. However, ERISA healthcare plans must also:

- Provide clear disclosure of premiums, co-pays, provider networks, premiums and deductibles.
- Outline claims procedures.
- Spell out plan portability (including COBRA coverage that extends insurance coverage after employee separation from employer) and include specific language addressing participant privacy outlined by HIPAA.
- Cover 48 hours of post-birth, in-hospital care (72 hours for C-sections).

The Affordable Care Act (ACA) added additional protections to healthcare plans, including those governed by ERISA, by:

- Requiring employers with 50 or more employees must offer healthcare coverage.
- Mandating equal coverage for all pre-existing conditions.
- Allowing dependent children to stay on a parent’s healthcare plan until age 26.
- Capping out-of-pocket costs.

### The Bottom Line on ERISA

While it’s likely you don’t need a working knowledge of ERISA, it is good to know that it provides numerous protections for the majority of your most valued employer benefits.

From protecting your hard-earned savings in your employer-sponsored retirement plan to crystal clear disclosures on all the moving parts of your healthcare plan, ERISA’s a law that has your back—even if it’s not part of your day to day.

Juan Carlos Cruz, Founder of Britewater Financial Group, works hard to help his clients achieve financial freedom in retirement. After 18 years in the industry, Juan has vast knowledge in designing plans that fulfill his client’s needs and objectives.

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