

Today's webinar will begin shortly.
We are waiting for attendees to log on.

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Please remember, employment law compliance depends on multiple factors – particularly those unique to each employer's circumstances. Numerous laws, regulations, interpretations, administrative rulings, court decisions, and other authorities must be specifically evaluated in applying the topics covered by this webinar. The webinar is intended for general-information purposes only. It is not a comprehensive or all-inclusive explanation of the topics or concepts covered by the webinar.



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ERISA Considerations for Church, Government, and Municipal Employers

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Agenda

- Employers subject to ERISA
- ERISA Exemptions
- General Considerations for Exempt Plans



Employers Subject to ERISA

- Virtually all private-sector employers, including nonprofits
- Covered Plans:
 - Pension Plans
 - Defined Benefit Plans
 - Defined Contribution Plans
 - Welfare Benefit Plans
 - E.g., Medical, prescription drug, dental and/or vision benefits, HSAs, HRAs, FSAs



ERISA Exemptions

- Governmental Plans
(includes Indian Tribal Governments)
- Church Plans



ERISA Exemptions



- Other plans not covered by ERISA:
 - Plans covering only self-employed individuals
 - Plans maintained solely to comply with applicable workers' compensation, unemployment compensation, or disability insurance laws
 - Plans maintained outside the U.S. primarily to benefit non-resident aliens
 - Unfunded excess benefit plans, as defined in ERISA § 3(36), 29 U.S.C. § 1002(36)

ERISA Exemptions – Governmental Plans



- Any employee benefit plan established or maintained by the government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of the foregoing
 - A plan is considered governmental if it was established by an entity that meets the definition above or if it is currently maintained by such an entity
- Application of the exemption is not always straightforward
 - Clearly exempt: plans sponsored directly by a state or local government (e.g., a city, county, township, or school district)
 - Less clear: plans sponsored by a “political subdivision,” “agency,” or “instrumentality”

ERISA Exemptions – Governmental Plans



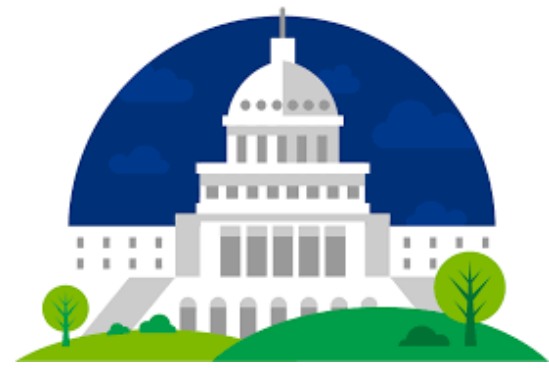
- When it's unclear whether the exemption applies, courts look at the following factors:
 - Purpose of the Organization: Focuses on how and why the organization was created. Was the organization created by or pursuant to a state statute or political subdivision charter? Are the services performed by the organization traditionally characterized as functions of a governing body or a private enterprise? Is the underlying purpose of the organization to perform a public or private function?
 - Control by or for a Governmental Entity: Does a state or a political subdivision have direct control over the organization's policy and decisions? Relevant inquiries include whether agency administrators answer to state or political subdivision officials and whether agency administrators are appointed (and removed) by state or local government officials
 - Source of Funding: Is the sole or primary source of agency funding through a state or political subdivision? Does the organization get funds from a state agency whose budget must be approved by the state or a political subdivision?

ERISA Exemptions – Governmental Plans



- Powers of the Organization: Looks at any indicia of sovereignty. Does the organization exercise traditional governmental powers (e.g., the right of eminent domain)? Is the organization exempt from taxes as a governmental body? Are the organization's facilities, activities, and operations exempt from the jurisdiction of local authorities?
- Relationship With Employees: Are the organization's employees treated more like private sector employees than government employees in terms of salaries and benefits?
- The IRS uses a six-factor test that looks at (among other things):
 - whether the entity is used for a governmental purpose and performs a governmental function,
 - whether performance of its function is on behalf of one or more states or political subdivisions, and
 - whether control and supervision of the organization is vested in a public authority or authorities

ERISA Exemptions – Governmental Plans



- Application of the exemption will depend, to a large degree, on how the employing entity is treated under state law; thus, similar entities in different states may be treated differently
 - Often arises in the context of plans sponsored by quasi-governmental entities
- Even where the plan sponsor is clearly a governmental entity, plan participation by a nongovernmental employer generally takes the plan outside ERISA's definition of governmental plan (unless participation is minimal)
- Participation by governmental employees in a plan established by a nongovernmental entity is not sufficient for the plan to be considered a governmental plan

ERISA Exemptions – Indian Tribal Governments

- Prior to the enactment of the Pension Protection Act of 2006 (PPA), ERISA was silent as to whether it applied to Indian tribal governments or tribal entities
- The PPA addressed this issue by including within ERISA’s definition of “governmental plan” those Indian tribal government plans that cover employees who perform governmental functions

ERISA Exemptions – Church Plans



- Any employee benefit plan established or maintained by a church (or by a convention or association of churches, hereafter collectively referred to as “Church”)
 - Includes plans sponsored by tax-exempt, Church-affiliated organizations (e.g., schools and hospitals)
- The plan must be established and maintained primarily for the benefit of employees of a Church (or their beneficiaries)
- The plan must not have made an irrevocable election under IRC §410(d), by which the plan specifically subjects itself to the requirements of ERISA Title II

ERISA Exemptions – Church Plans



- The applicability of the Church Plan exemption has recently seen substantial controversy due to conflicting interpretations of ERISA’s definition of “Church Plan”
 - *ERISA § 3(33)(A): The term “church plan” means a plan established and maintained . . . for its employees (or their beneficiaries) by a church or by a convention or association of churches . . .*
 - *ERISA § 3(33)(C): For purposes of this paragraph — A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization . . . the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches [(i.e., a “principal-purpose organization”)].*

ERISA Exemptions – Church Plans



- 1st Interpretation: The second part of the definition supplements the first. Thus, a Church Plan must be established by a Church, but may be maintained by either a Church or a principal-purpose organization (upheld by three Circuits over the last few years)
- 2nd Interpretation: The second part of the definition is an alternative to the first. Thus, a Church Plan must either (1) be established and maintained by a Church, or (2) be maintained by a principal-purpose organization, regardless of whether the plan was originally established by a Church (upheld by the IRS, PBGC, and DOL for the last 30 years)

ERISA Exemptions – Supreme Court’s Interpretation of “Church Plan”



- *Advocate Health Care Network v. Stapleton (2017)*
 - Consolidated on review with *Saint Peter’s Healthcare System v. Kaplan* and *Dignity Health v. Rollins*
 - Involved church-affiliated hospital systems operating plans under the Church Plan exemption; participants sued seeking protections afforded under ERISA
 - The Court unanimously ruled that plans sponsored by these Church-affiliated organizations may qualify for the “Church Plan” exemption, regardless of whether the plans were originally adopted or established by a church, because the plans are maintained by principal-purpose organizations
 - Adopted the interpretation historically endorsed by the IRS, PBGC, and DOL
 - Reversed the rulings of the 3rd, 7th, and 9th Circuits, each of which upheld the narrower interpretation

ERISA Exemptions – Supreme Court’s Interpretation of “Church Plan”



- The Court admitted there was little legislative history to rely on in making its decision
 - In a concurring opinion, Justice Sotomayer pointed out that church-affiliated organizations, such as the hospitals being sued, include some of the largest healthcare providers in the country and often have for-profit subsidiaries. She stated that these organizations often “look and operate more like secular businesses” and compete with for-profit entities without the burden of ERISA compliance
- Would Congress have intended for such a broad application of the Church Plan exemption?
 - After all, the public policy behind ERISA is to protect the interests of employee benefit plan participants and their beneficiaries
 - The Church Plan exemption was intended to prevent excessive government entanglement with religion, but these organizations are becoming increasingly decoupled from religion
 - ***Is a Congressional action narrowing the exemption on the horizon?***

General Considerations for Exempt Plans



- ERISA Requires

- Written Plan documents
- Distribution of Summary Plan Description and other participant disclosures
- Rules regarding processing of claims for benefits
- Annual Form 5500 reporting
- Fiduciary obligations and bonding requirements

If you're not doing all this, you must be confident in your plan's exempt status!



General Considerations for Exempt Plans

- ***Regularly conduct self-audits***

- Keep track of how the courts are interpreting and applying ERISA exemptions, and ensure that your plan meets the requirements

- ***Review your plan documents***

- If a wrap plan document combines ERISA and non-ERISA programs under a single document, it should clearly indicate which components of the plan are subject to ERISA
- Avoid any unnecessary references to ERISA (*see next slide*)



General Considerations for Exempt Plans

- Drafters for ERISA-exempt plan documents often begin with sample documents intended for use by ERISA plans, and may mistakenly keep ERISA references
- References will not make an otherwise exempt plan subject to ERISA, however, they may serve to confuse employees and might create contractual rights
 - Plan references to ERISA rights might operate to incorporate those rights into the plan and make them enforceable as a matter of state contract law (which generally will apply to ERISA-exempt plans)
 - E.g., an ERISA-exempt plan that incorporates ERISA-required claims procedures in its plan document could be required to follow those procedures under state contract law
- If you want your exempt plan to provide ERISA-like protections, just build the provisions into the plan (don't specifically reference ERISA)

Continuing Education Credit

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Final Questions



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Thank You

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