

Back to Basics - Common Words with Uncommon Meanings

Most non-government, non-church retirement and health and welfare benefits are governed by the Employee Retirement Income Security Act (ERISA). The following is a quick reminder that ERISA and related guidance are based on a unique, sometimes counterintuitive vocabulary. Below are examples of uncommon meanings given, in the context of ERISA, to common words and phrases.

<u>Common Word or Phrase</u>	<u>Common Understanding</u>	<u>ERISA Meaning</u>
<p>1. Employer</p>	<p>The entity for whom an individual works.</p>	<p>The entity for whom an individual works (the “direct employer”) plus related entities (e.g., the direct employer and all entities linked to the direct employer by an 80% or greater chain of ownership, or by 80% or greater common ownership among five or fewer individuals, estates or trusts).</p> <p>This employer group is often referred to as a “controlled group,” or as an “affiliated” or “related” employer or entity.</p> <p>See Internal Revenue Code sections 414(b) and 414(c), 1563(a)(1) and (f)(5), and Treasury Regulations sections 1.1563-1(a)(2)(i) and (a)(3)(ii).</p>

<p>2. Employee</p>	<p>A person who works for an Employer.</p>	<p>a. <u>Employee</u>. Any employed person in the <i>controlled group</i>. This definition is relevant, for example, in the context of vesting. Even if an employee stops working for a controlled group entity whose employees participate in a pension plan, the employee can continue to earn vesting service under that pension plan while working for another member of the controlled group whose employees do not participate in that pension plan. This is because, under the controlled group rules, all service performed for related Employers is aggregated for purposes of determining vesting.</p> <p>b. <u>Eligible Employee</u>. Any employed person in the <i>controlled group</i> whose <i>direct employer</i> is a participating company in an ERISA plan. For example, only employees working for a participating company can earn additional benefits under an ERISA Plan. The best practice is for such an Employee to be referred to as an “Eligible Employee.”</p>
<p>3. Terminate Employment</p>	<p>Stop working for your <i>direct employer</i>.</p>	<p>Cessation of employment for your Employer...i.e., stop working for any entity in the controlled group, not just the <i>direct employer</i>).</p>
<p>4. Retire</p>	<p>Stop working for your <i>direct employer</i>.</p>	<p>a. Same ERISA meaning as item 3, above.</p> <p>b. Terminate employment after having attained a specified age and service condition (e.g., age 60 with 10 years of service).</p> <p>c. Go into pay status (i.e., start receiving monthly payments from a retirement plan).</p>
<p>5. Pension Plan</p>	<p>A retirement plan that pays a monthly pension.</p>	<p>A plan or program (including a 401(k) employee elective deferral plan or a provision in an employment agreement) that provides retirement income to an Employee or defers income to an Employee’s employment termination date or beyond. See ERISA section 3(2)(A).</p>

<p>6. Administrator or Plan Administrator</p>	<p>The third-party administrator (e.g., Fidelity, Vanguard, Blue Shield, Blue Cross), that provides day-to-day administrative services to an employee benefit plan (the “TPA”).</p>	<p>Under ERISA, the Administrator is the person or entity (often a plan committee) that serves as the named fiduciary of an ERISA-covered plan. The Administrator must operate the plan in accordance with its terms and in the best interests of participants and their beneficiaries. The Administrator is typically granted discretionary authority to make decisions regarding plan operations, and has personal liability for its breach of fiduciary duties and responsibilities. TPAs are not plan fiduciaries and, therefore, do not have any duty under ERISA to adhere to fiduciary standards. (Note, however, that any TPA that actually exercises discretion regarding management of an ERISA-covered plan and/or its assets is deemed to be a fiduciary (a “functional fiduciary”), and will be held to ERISA fiduciary standards. See ERISA section 3(1). <u>Note:</u> Unless provided otherwise in the plan document, the plan sponsor is deemed to be the Administrator within the meaning of ERISA.</p> <p>See e.g., ERISA sections (3)(16) and 409, and ERISA Regulation 2510.3-16.</p>
<p>7. Multiemployer Plan; Multiple Employer Plan</p>	<p>A plan in which more than one employer participates.</p>	<p>A Multiemployer Plan is a collectively bargained plan in which unrelated employers participate. See, ERISA (37) (A) A Multiple Employer Plan is a plan in which more than one unrelated employers participate. A Multiple Employer plan is not a collectively bargained plan. See, e.g., instructions to section 5 of IRS Form 5500.</p> <p>See discussion of related employers above. If multiple Employers participate in an ERISA-covered plan and those entities are <i>related</i>, the plan is to be treated as a single employer plan.</p>

<p>8. Voluntary Benefit</p>	<p>A benefit offered by an employer that can be voluntarily elected and 100% paid for by an employee.</p>	<p>Voluntary Benefits within the meaning of ERISA are <i>group</i> benefits that have not been <i>endorsed</i> or paid for by the employer, and therefore are exempt from ERISA requirements such as filing a Form 5500 or distributing a summary plan description. In practice, very few benefits satisfy this ERISA definition because the Employer typically selects (and therefore <i>endorses</i>) group benefits offered to its Employees. See ERISA Regulation section 2520.3-1(j).</p>
<p>9. Excepted Benefit</p>	<p>A benefit (e.g., unemployment insurance) that is not subject to ERISA.</p>	<p>A health benefit that is exempt from certain Affordable Care Act requirements (e.g., enhanced appeals and external review procedures) and from HIPAA Portability requirements (e.g., special enrollment rights). Such an excepted benefit is not, however, exempt from HIPAA Privacy and Security requirements or from general ERISA requirements such as COBRA health care continuation. See e.g., ERISA Regulation section 2590.732(c).</p>

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