

Are Your Voluntary Benefits Programs Subject to ERISA?

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An issue that many employers face is whether their so-called "voluntary benefits programs" should be considered ERISA plans. Voluntary benefits programs are characterized by employee-only paid premiums and limited employer involvement in a fully insured product. For the benefits provided under such a voluntary benefits insurance policy to be exempt from ERISA, the employer's involvement in administering the policy must satisfy the requirements set out in the ERISA safe harbor regulation, as interpreted by the DOL and various courts. Generally, such a program will be exempt from ERISA if (i) there are no employer contributions toward coverage, (ii) participation in the program is completely voluntary, (iii) the employer does not endorse the program, and (iv) the employer receives no consideration for the program.

A recent case decided by a federal district court in Kentucky applied the above principles to determine whether a voluntary accidental death insurance policy was subject to ERISA. In *Blake v. Life Insurance Company of North America*, the plaintiff-employee sought to remand the case to state court by arguing that the insurance policy was exempt from ERISA under the safe harbor regulation. She argued that the employer did not pay for any coverage under the policy nor endorse the voluntary insurance program. The court disagreed and held that (i) the employer contributed to the plan by subsidizing other benefits in the employee health plan, and (ii) the employer established and maintained the plan because it negotiated the terms of the policy and was listed as the policyholder in the summary plan description. The court thus concluded that the program was subject to ERISA thereby preempting the state laws that the plaintiff wanted to control this dispute.

This court opinion serves as a useful reminder for employers to review their voluntary benefits programs to determine whether they are subject to ERISA. It is generally advantageous to employers if their voluntary benefits programs are subject to ERISA, particularly in the event of a dispute because the remedies and potential damages available under ERISA are typically much more limited than would be available to a successful plaintiff under state law.

The court's opinion is available [here](#).