

Did You Know Your EAP is Subject to ERISA?

May 2, 2023

PRACTICES ERISA and Other Benefits Litigation, Employee Benefits and Executive Compensation

Generally, if an employee assistance program (“**EAP**”) is providing mental health or substance use disorder counseling services, the EAP is providing benefits subject to ERISA and thus may be an “employee welfare benefit plan” as defined in ERISA. Even if the EAP is exempt from some ERISA requirements as an “excepted benefit”, it may remain subject to other requirements, such as the requirements to maintain a written plan document and summary plan description (“**SPD**”), benefits claims procedures, and COBRA coverage, as well as the requirement to enter into reasonable contracts. It is common for EAP providers to fail to recognize an EAP as an ERISA benefit plan. When that happens, the employer-sponsor may not have the documentation it needs to comply with ERISA’s requirements. Often, the service agreement with the EAP does not address claims, fiduciary status, and COBRA responsibilities. Employers should ensure that all service agreements for benefits programs that are regulated by ERISA, such as EAPs, are properly reviewed to prevent costly compliance gaps.