

## New Year, New Litigation Target: Voluntary Benefit Programs

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**PRACTICES** Employee Benefits and Executive Compensation

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A large plaintiffs' firm ended 2025 and kicked off 2026 with several ERISA lawsuits against different employee plan sponsors, alleging fiduciary duty violations concerning the management and administration of voluntary benefit programs, including accident-only, cancer, critical illness, and hospital indemnity policies.

The four recent complaints (three filed in Illinois district courts, and one filed in New York district court) each allege that the employer-plan sponsor of a group health and welfare benefit plan for employees violated its fiduciary duties under ERISA by “failing to monitor, negotiate, and ensure prudent and reasonable carrier selection, broker commissions, and loss ratios” for voluntary benefit programs, and as a result, participants “paid excessive and unreasonable premiums.”

The complaints further allege that the broker in each case engaged in a prohibited transaction under ERISA by causing excessive compensation to be paid to itself from the benefit plan. There are two major takeaways for employers from these complaints:

First, many voluntary benefit programs are subject to ERISA. Employers should be careful about relying on the DOL's safe harbor exemption for voluntary group insurance programs because certain safe harbor requirements, particularly the requirement that there can be no “endorsement” of the program by the employer, may be difficult to satisfy in practice. As each complaint notes, a “recent analysis by ComplianceBug . . . discovered more than 80% of ‘worksite and voluntary benefits’ plans are . . . subject to ERISA despite employers (and their brokers) believing the plans were exempt from compliance requirements under DOL Reg. § 2510.3-1(j) ‘voluntary plan safe harbor.’”

Determining what employer actions constitute an endorsement of the voluntary program, and thus cause the program to be subject to ERISA, is highly fact-specific but may include actions such as using an employer logo or its letterhead on communications about the program. Employers should contact their legal counsel to determine if a voluntary benefit program is subject to ERISA.

Second, plan sponsors should evaluate their fiduciary practices with respect to any voluntary benefit programs offered to employees and ensure that they maintain a prudent process for evaluating such programs. While the current litigation is ongoing, prudent and proactive actions may minimize future risk exposure.

The four recent complaints can be found [here](#), [here](#), [here](#), and [here](#).