

Reminder: A Severance Policy Could be an ERISA Plan

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As the coronavirus pandemic continues, many employers have been forced to reduce their workforce, oftentimes paying some form of severance to their employees. One area that continues to cause confusion among employers is whether their severance policy is an employee benefit plan subject to ERISA. Generally, informal arrangements that feature one-time payments in response to ad hoc situations and that do not have an ongoing administrative scheme will not be subject to ERISA. However, it is not always clear when such arrangements become employee benefit plans that are subject to ERISA. It is generally not to the employer's advantage to have its severance strategy characterized as an informal arrangement not subject to ERISA. For example, the beneficiary of such an arrangement would be able to sue in state court for benefits, which could expose the employer to larger damage awards than are available under ERISA. Employers should ask their counsel to review their severance policies to determine whether the policy constitutes a plan subject to ERISA.