



## ERISA Litigation

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Our team of ERISA litigation attorneys, chaired by Bentley J. Tolk, has substantial experience defending insurers, plans, third-party administrators, plan sponsors, and employers in an array of ERISA [litigation matters](#) and benefits-related claims. Such claims have involved the following issues: benefit denials; alleged breaches of the Mental Health Parity and Addiction Equity Act; preemption; fiduciary litigation; prohibited transactions; breach of contract; promissory estoppel; negligent misrepresentation; bad faith; and unfair insurance practices.

At Parr Brown Gee & Loveless, our primary focus is on creating a strong relationship with each client. Our attorneys spend the time necessary to fully understand your situation, which allows us to address your case with the utmost attention. Our ERISA attorneys are highly experienced in defending ERISA and benefits cases and have had numerous successful outcomes. For assistance or further information, please contact Bentley J. Tolk at [\(801\) 257-7947](tel:8012577947) or [btolk@parrbrown.com](mailto:btolk@parrbrown.com).

## What you should know before contacting an ERISA Lawyer

Listed below are helpful resources regarding the ERISA statute. Many people are unclear about ERISA, and how it may affect them. Please browse the information below, or contact one of our ERISA attorneys for further clarification.

### What is “ERISA”, and where is the ERISA statute located?

“ERISA” is an acronym for the Employee Retirement Income Security Act of 1974. The statute can be found at 29 U.S.C. § 1001 et seq.

### What is an “ERISA plan”?

An “ERISA plan” or employee benefit plan can be either a pension plan or a welfare plan, or both. A pension plan (also known as an employee pension benefit plan) is generally established by an employer or employee organization. The plan is designed to provide retirement income to employees, or results in a deferral of income by employees extending to termination and beyond. A welfare plan (also known as an employee welfare benefit plan) generally is established or maintained by an employer and/or employee organization for the purpose of providing its participants or beneficiaries (through purchased insurance or otherwise) with such benefits as medical, accident, disability, death or unemployment, etc.

## What types of plans are exempt from ERISA?

In general, government plans (federal, state, state subdivision, agency), church plans, compliance plans (maintained solely to meet workers' compensation laws, unemployment laws, or disability insurance law), foreign plans (maintained outside the United States primarily for the benefit of persons substantially all of whom are nonresident aliens), and excess benefit plans (an employer-maintained plan created solely for the purpose of providing benefits in excess of certain limitations) are exempt from ERISA. Unfunded plans providing deferred compensation to select highly compensated management employees are also partially exempt from the ERISA statute.

## Is there a statute of limitations for ERISA causes of action?

Yes and no. ERISA contains a 6-year statute of limitations for certain breach of fiduciary duty claims. However,

## Concerning ERISA Participants, Beneficiaries, Plan Administrators & Employers

### Does the statute mandate that employers provide a certain level of benefits?

No. ERISA does not dictate what benefits employers provide or mandate that employers offer any benefits at all. Subject to various limitations, an employer may terminate or modify an ERISA plan.

### May plan administrators be subject to penalties under ERISA for failure to provide requested documents to a participant or beneficiary?

Yes, under certain circumstances. For penalties to apply, the participant or beneficiary must submit a written request to the plan administrator. In addition, the written request must be for the latest updated summary plan description, the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, and/or other instruments under which the plan is established or operated.

### Who qualifies as a "participant" for purposes of ERISA?

Pursuant to ERISA, a participant is an employee or former employee of an employer, or a member or former member of an employee organization, who is or may become eligible to receive any type of benefit under an ERISA plan that covers such an employee or member, or whose beneficiaries may be eligible to receive such a benefit. In practice, the participant is generally an eligible employee of the employer that is sponsoring the ERISA plan.

### Who qualifies as a "beneficiary" for purposes of ERISA?

A "beneficiary" under ERISA is a person designated by a participant, or by the terms of an ERISA plan, who is or may become entitled to a benefit under the plan. For practical purposes, beneficiaries of an ERISA plan are often the employee's family members, such as spouses and children.

## ERISA Litigation Fundamentals

Here you will find common questions regarding ERISA lawsuit claims. Whether or not to pursue a claim is generally a complex and intimidating decision to make. Read through the information below for clarification, or reach out to one of Parr Brown's experienced & professional ERISA lawyers for further assistance.

## What ERISA litigation claims or causes of action are available?

Although Section 502(a) (29 U.S.C. § 1132(a)) of ERISA lists multiple causes of action, there are four primary causes of action brought by most ERISA plaintiffs: (1) claims for penalties under Section 502(a)(1)(A) and Section 502(c) when statutorily mandated information is not provided; (2) claims under Section 502(a)(1)(B) for benefits due under a plan or to enforce rights or clarify rights under a plan; (3) claims for breach of fiduciary duties under Section 502(a)(2) for "appropriate relief" under Section 409 of ERISA; and (4) claims under Section 502(a)(3) – ERISA's "catchall" provision – for injuries that Section 502 does not remedy elsewhere.

## Is there a cause of action for discrimination or interfering with a person's rights under an ERISA plan?

Yes. Pursuant to Section 510 of the ERISA statute, it is unlawful to hire, suspend, fine, discipline, expel, or discriminate against a participant or beneficiary (1) for exercising any right under an ERISA plan; or (2) for the purpose of interfering with the attainment of any right to which such a participant may become entitled under the plan or ERISA. It is also unlawful to retaliate against persons who provide information or testify in a proceeding or inquiry under ERISA. A plaintiff in such a case typically has the burden of proving there was an adverse action against the participant or beneficiary for the purpose of interfering with the attainment of an ERISA benefit.

## What are the requirements for service of process in an ERISA lawsuit?

A plan may be served with a summons or other legal process through service on the administrator or trustee of the plan. If the plan has not designated in its summary plan description an agent for purposes of service of legal process, a plaintiff may serve the Secretary of Labor with such process.

## Who May Sue & Be Sued?

### Who can sue under ERISA?

By statute, only four classes of plaintiffs may sue under ERISA: plan participants, plan beneficiaries, the Secretary of Labor, and plan fiduciaries.

### Who can be sued for a denial of benefits under an ERISA plan?

In general, the only proper defendant is the plan itself. Some courts, however, have also allowed claims for denial of benefits against such entities as the employer, the insurance company at issue, or a third-party administrator of a plan.

## Details On ERISA Action in the Courts

## Must an ERISA action be brought in federal court, as opposed to state court?

The federal courts have exclusive jurisdiction of ERISA claims, with the general exception of claims for benefits or to enforce or clarify rights under Section 502(a)(1)(B). Claims under Section 502(a)(1)(B) may be brought either in federal court or state court. Otherwise, an ERISA action may be brought in the federal judicial district where the plan is administered (e.g., where management decisions are made), where the alleged ERISA breach took place (e.g., where benefits were to be received or where the fiduciary was supposed to act or not act), or where a defendant resides or may be found. Service of process may occur in any other district in which a defendant lives or may be found.

## Does a litigation matter need to be for a certain dollar amount in order to be in federal court?

No. The U.S. District Courts have jurisdiction over ERISA matters, regardless of the amount in controversy or the citizenship of the parties. Although federal judges may not like to handle ERISA cases that involve low damages figures, it is not uncommon for federal courts to handle ERISA benefits disputes that involve less than \$10,000.

## May a lawsuit that is brought in state court be removed to federal court?

It depends. State law claims that are preempted and that fall within the civil enforcement provisions of ERISA are removable. Whether a state law claim is removable can be a complicated issue, and the legal landscape is constantly shifting. As a general matter, a claim for benefits under ERISA – whether styled as such or whether disguised as a state law claim – should be removable to federal court. There are many factors and nuances, however, that will impact the removability of such a claim. Our ERISA lawyers can help you through this process.

## Concerning Damages, Trial Rights & Attorney Fees

### Is there a jury trial right for an ERISA lawsuit?

No. ERISA does not expressly grant a jury trial, and almost all Circuit Courts of Appeal that have applied the traditional Seventh Amendment two-part jury trial analysis have concluded that the relief sought is more equitable than legal, thus disallowing a jury trial right.

### Are attorneys' fees recoverable in an ERISA lawsuit?

By statute, ERISA generally provides for reasonable attorney's fees and costs of action to either party, at the discretion of the trial court. Most circuits have adopted a five-part test for assessing the application of ERISA lawyer's fees under ERISA: (1) the degree of the opposing party's bad faith or culpability; (2) the opposing party's ability to satisfy an award of attorney's fees; (3) whether awarding attorney's fees could deter others under similar circumstances; (4) whether the party seeking attorney's fees was attempting to benefit all beneficiaries and participants under the ERISA plan or to resolve a significant ERISA legal question; and (5) the relative merits of the parties' positions. As a practical matter, plaintiffs are more likely to be awarded attorney's fees than are defendants in ERISA actions.

## Are extra-contractual damages available in ERISA cases for denied benefits?

Extra-contractual damages are not available in connection with claims for benefits under an ERISA plan.

## Are punitive damages available in an ERISA lawsuit?

Punitive damages are unavailable in actions under Section 502(a)(1)(B) (which includes actions for the recovery of ERISA benefits) and are generally unavailable pursuant to other ERISA causes of action.

## Further Information Regarding ERISA Litigation

### What is the proper standard of review in a case for denial of benefits under ERISA?

Similar to the issue of ERISA preemption, the landscape is constantly shifting with regard to the standard of review for a denial of benefits under ERISA. Moreover, the different Circuit Courts of Appeal have generally taken different approaches in applying applicable U.S. Supreme Court precedent. According to the Supreme Court, a denial of benefits under ERISA is generally reviewed de novo unless the terms of the plan give the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe plan terms. When the terms of the plan confer such authority, an arbitrary and capricious standard of review applies.

### Is exhaustion of administrative remedies required in an ERISA litigation matter for denied benefits?

Although ERISA's civil enforcement scheme does not reference exhaustion of administrative remedies, courts have generally required plaintiffs in claims for ERISA benefits to exhaust their administrative remedies under the plan before suing for those benefits. However, courts have recognized at least three exceptions to the exhaustion requirement: (1) futility of an [appeal](#) to the plan; (2) a denial of meaningful access to plan procedures; and (3) irreparable harm. An ERISA lawyer can help you determine if your case meets these requirements.

### Does an action for denied health benefits by a participant or beneficiary who is on COBRA qualify as ERISA litigation?

Yes. COBRA's provisions are incorporated into both ERISA and the Internal Revenue Code. A participant or beneficiary who is on COBRA and who is receiving group health benefits generally has the same rights vis-à-vis denied benefits as any other participant or beneficiary under an ERISA plan. The ERISA litigation landscape is constantly shifting, and some of the information below may change or become outdated over time. Please contact one of our ERISA attorneys for more updated, current information.

## Consult An Experienced ERISA Litigation Attorney

For further assistance in defending ERISA or [other litigation matters](#), complete this form or please call or email Bentley Tolk today at [\(801\) 257-7947](tel:8012577947) or [btolk@parrbrown.com](mailto:btolk@parrbrown.com).

If you would like more info download our [ERISA Info PDF](#).

