

Employee Benefit Plans

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This book is dedicated to Steve.

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Preface

Writing this text book truly was a labor of love. As an employee benefits professional, I have generally enjoyed every day at work, every client I advocated for, and every project I worked on throughout my career. As an educator, I absolutely relish teaching the laws surrounding employee benefit plans to students who have no idea what the class is all about and who only enrolled in the class because it fit their schedule, and yet, by the end of the semester, are actually excited about the topic and consider focusing their careers on helping employers provide proper employee benefit plans, helping employees receive the benefits promised, or helping the federal government regulate the process.

The exciting aspect of a career as an employee benefits professional is that the rules are always changing—whether through actual amendment by Congress, through guidance by the Department of Treasury or Department of Labor, or through court cases interpreting the former.

Right before I began writing this text book, I was asked to rewrite a BNA Tax Management Portfolio, which is now called Kozak, “Employee Benefit Plans and Issues for Small Employers” (353–4th T.M.). Unfortunately, I did not have it in me to discuss the same basic concepts and regulatory framework in this text book in a wholly different manner using different words and different orders. Therefore, out of fairness to BNA, the publisher of the Portfolio, and to Carolina Academic Press, many portions of this book have been extracted directly from the Portfolio. Then, after starting to write this book, but before completed, I was asked to become co-editor and lead contributing author for the third edition of “A CPA’s Guide to Retirement Plans for Small Businesses,” published by the American Institute of Certified Public Accountants (AICPA), and again, the chapters I penned for that reference book look very similar to the corresponding provisions in this textbook and in the BNA Tax Management portfolio.

Who this book was written for: As you see from my biography, I have several different professional certifications—each of which is an aspect of expertise in employee benefit plans design, operation, or education. While I am currently a member of the faculty of a law school, and primarily teach law students interested in becoming benefits attorneys, The John Marshall Law School in Chicago also offers a Master of Science degree for non-attorney professionals, and I teach them not how to practice law, but how to understand how attorneys understand, communicate and apply the law. Before becoming an academic, as an actuary and consultant, I was responsible for training newer associates, and grew to appreciate how different individuals, from various undergraduate degrees and life experiences, were still part of the larger group of benefits professionals, and all needed to learn how Congress enacted employee benefits laws, how the federal agencies regulated those employee benefits laws, and how the courts interpreted employee benefits laws where there was ambiguity. Therefore, I have tried to incorporate all of my past experiences (some good, some bad) into a text book that can be used in a law school or in a busi-

ness school class, in an actuarial or human resources management curriculum, or as a desk reference for benefits professionals who are just trying to become better at their jobs.

In addition, there is a new professional designation for benefits professionals called an “Employee Retirement Plan Agent” (ERPA). I discuss the role of ERPAs in chapters 3 and 21 and in Appendix D. The examination process to earn the ERPA designation is quite new, and I purposely have included all of the materials necessary to study for and take the exams within this book, and in Appendix D, I have copied all of the learning objectives for the ERPA exams with a pinpoint cite to where in this book that topic is discussed. Please note that I am not trying to usurp any other study materials specifically prepared for ERPA examination takers, but if you are using this book anyway, then you should not need to go to any other source.

The purpose of this book: Benefits professionals generally need to understand the three main categories of employee benefits: (1) retirement benefit plans; (2) health and welfare benefit plans; and (3) executive compensation and equity programs. This book was written primarily to discuss the rules of retirement benefit plans, and only has one chapter each devoted to health and welfare benefit plans and to executive compensation. Therefore, when you have finished the book (whether as part of a class or simply for fun), you will have a very solid understanding of the regulatory framework and practical applications in regards to retirement plans, and only a broad and cursory understanding of the other aspects of employee benefit plans.

The way this book is organized: First, you will notice that it is broken down into 5 sections, with sections II and III being the main emphasis of the book.

Section I provides a nice grounding of why employers would want to provide benefits to employees in addition to cash compensation, and the types of benefits that are most common, and then a very basic summary of basic tax concepts that any benefits practitioner should understand. Since I am writing this book from the point of view of an attorney, but I want non-law school students and non-attorney professionals to feel comfortable reading it, I have included a “Law 101” discussion in Appendix A, which provides an overview of the U.S. legal system, a summary of some vocabulary and citing standards, and some websites that you can go to for further information.

Section II is all about how certain retirement plans can be considered “qualified retirement plans.” In the first chapter of the section, the book distinguishes between the for-profit employers that can sponsor qualified retirement plans and the other non-profit employers (like state and local governments and churches) that can only sponsor non-qualified retirement plans. I explain how the rules for qualified plans are more complex than the rules that govern non-qualified plans (although the trend is to make those non-qualified plans as complicated to design and administer), so that if you, as a benefits practitioner, understand the qualified plan rules, then you can easily learn the rules for non-qualified plans when you have a client in need of that knowledge. The chapters then discuss the distinction between defined benefit and defined contribution type plan designs; the manner that the sponsoring employer can deposit money into the plan to fund the benefits promised; the vesting and accrual rules which determine how employees promised retirement benefits actually earn a legal right to receive those benefits; the annual tests or safe harbor plan designs required to ensure that the plans provide “enough” benefits to “enough” lower paid employees; the time, manner, and income tax implications of distributions from qualified retirement plans to the employees or their beneficiaries; and finally, a review of how the IRS functions to regulate the income tax aspects of qualified retirement plans.

Section III is a bit broader, as it discusses the rights under the Employee Retirement Income Security Act of 1974 (ERISA) that extend to employees who are promised benefits by an employer that are delivered through an employee benefits plan (which includes qualified retirement plans, some non-qualified retirement plans, and also some group health benefit plans). The starting point is a chapter that discusses which plans, programs, schemes, or payroll practices are in fact, governed by ERISA, and if governed, then the requirements for a written plan document and a Summary Plan Description. The chapters then discuss the individuals who are legally classified as fiduciaries over plan assets and how to fulfill their fiduciary duties and obligations; the civil and criminal causes of action and remedies available when things go awry; the reporting and disclosure requirements for communication to the federal government and to the plan participants; how retirement plans can be terminated; and finally, a review of how the Department of Labor functions to regulate the employee protection aspects of ERISA employee benefit plans.

Section IV is the place where other employee benefit plans are discussed—one chapter summarizes executive compensation, another summarizes health and welfare benefit plans, and a third summarizes Social Security benefits and Individual Retirement Accounts. Remember, the focus of this book is on the taxation and employee protections of retirement plans, and this section just fills in some of the gaps without any great detail.

Section V provides some final issues. Paying attention to ethical issues is crucial for any benefits professional to maintain his or her professional certification and to help prevent law suits for malpractice, and the first chapter highlights ethical issues that are applicable to all professionals, especially those who want to represent their clients and practice in front of the IRS. The following chapter is a special treat for anyone interested in a career as a benefits professional, as nine outstanding colleagues share their thoughts with career essays specifically written for this book. Finally, the book concludes with a quick summary of my perceived problems with ERISA, and includes excerpts from a report on global issues with an aging population and some articles I wrote that summarize my retirement concerns for America's aging population.

The Appendices include summaries of the law and the way lawyers think and conduct research in Appendix A; a table showing statutory limits and thresholds included in the statutes, their primary cites, and cost of living adjustments for 2008, 2009 and 2010 in Appendix B; a set of six charts showing how ERISA is organized, how to determine whether an employee benefit plan is governed by ERISA, how the relevant sections of the Internal Revenue Code are organized, and some dissection and comparison of qualified defined contribution plans and defined benefit plans in Appendix C; a list of all of the learning objectives needed to successfully complete the ERPA exams and a mapping to where that material is found in this text book in Appendix D; and a chart showing the sections of ERISA with the corresponding cites in Title 29 of the U.S. Code.

How to read this book: Each chapter starts with an overview, which includes simply bullet-points. If you are using this book for classroom instruction and your professor decides to omit any chapter from the syllabus, I still strongly encourage you to at least read through the overview of that omitted chapter. The main part of each chapter is then the regulatory framework. Where large chunks are based on statutory provisions of the Code or ERISA (or regulations), those cites are prominently shown right below the title for that chunk of information; otherwise, the cite for a passing thought is footnoted. I am expecting that in addition to reading this textbook, you will also read the statutory provisions. Within the regulatory framework, I have included sections of regulations, other guidance, or court cases where the point I am trying to make is much better communi-

cated through that other document. I tried to limit the use of such outside documents as to not overwhelm you, but I think I included enough primary source material that by the time you are done reading this book, any phobia you might have with going directly to the Code or ERISA when confronted with a client's issue will be eliminated. Bold horizontal lines within the regulatory framework sections of the chapter signal primary source material.

There are many complicated rules, and the book is purposely layered. When you have read through the entire text, all of the minor details should start making sense. Please realize, however, that I am only providing a summary of the general rules in this book—I implore you to never think that by reading this book, without reading the actual statutory or regulatory provisions, and without discussing the issues with other benefits professionals, that you are competent to advise or perform any work for a client.

So, I hope that the organization of this book and the care I put into making your learning experience worthwhile and somewhat enjoyable will make you a better benefits professional, if that's the career path you choose, or at least will make you a better employee or employer, in knowing what benefits can be promised and how they can be delivered through employee benefit plans.

About the Author

Barry Kozak is an Enrolled Actuary, an Attorney, and a Chartered Financial Consultant. Kozak teaches various employee benefits, income tax, elder law and compensation law classes at The John Marshall Law School and DePaul University College of Law, and is the Associate Director of the graduate Employee Benefits programs at The John Marshall Law School in Chicago. Kozak received his BS (Applied Statistics) degree from the University at Albany, his JD and LLM (Employee Benefits) degrees from The John Marshall Law School, and his MPP (Economic and Social Policy) from the University of Chicago Harris School of Public Policy Studies.