

LAW OF EMPLOYEE
PENSION AND WELFARE
BENEFITS

Third Edition

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LAW OF EMPLOYEE PENSION AND WELFARE BENEFITS

Third Edition

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MATTHEW  BENDER

PREFACE

The Law of Employee Pension and Welfare Benefits, 3rd Edition, integrates new statutory and case law developments into the framework of the previous edition. Private employer-sponsored retirement plans hold trillions of dollars in assets, and more than half of all Americans depend upon employer-sponsored plans for their health care coverage. In light of the size, diversity, and complexity of employee benefit plans, it should come as no surprise that the federal law governing employee benefit plans is also diverse and complex.

The complex nature of pension and welfare benefits law affords attorneys a variety of practice opportunities. For example, some benefits lawyers are principally litigators focusing their practice on enforcing the benefits promised by such plans. Other benefits attorneys are principally tax lawyers who, among other things, draft and amend plans to ensure that they comply with the extensive requirements that plans must satisfy to “qualify” for favorable federal income tax treatment. Some benefits lawyers work for one of three federal agencies that regulate employee benefits: the Department of Labor, the Internal Revenue Service, or the Pension Benefit Guaranty Corporation. The breadth of employee benefits practice is aptly illustrated by the fact that six different sections of the American Bar Association have committees on employee benefits and executive compensation: the Business Law Section, the Health Law Section, the Labor and Employment Law Section, the Real Property, Trust and Probate Law Section, the Taxation Section, and the Tort Trial and Insurance Practice Section.

This book is designed to introduce readers to the breadth and the depth of employee benefits law. Its goal is to give the reader an appreciation of why the federal government regulates employee benefit plans, how it does so, and the policy and social justice questions raised by the manner and effectiveness of that regulation.

The book begins with a brief history of employee benefit plans and explains how they came to have such importance in our society. It then offers a broad overview of how the two most significant federal statutes, the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC), regulate employee benefit plans. The creation and operation of pension and welfare benefit plans is examined, followed by an analysis of the federal preemption of state regulation in this area. The statutory and case law that governs plan administration and enforcement of plan benefits is next considered. The book then turns to the complex regulatory scheme that determines whether a plan qualifies for favorable tax treatment. It concludes with the issues that arise if a plan is terminated, and the role of the Pension Benefit Guaranty Corporation in insuring certain plan benefits.

Employee benefit law is an amalgam of statutory and case law with some aspects, such as preemption, dominated by case law, while others, such as the nondiscrimination rules, are almost exclusively creatures of statutes and regulations. The book, therefore, necessarily reflects these differences in the presentation of the material. Some of the chapters, such as Chapters Five, Six, and Seven on ERISA Preemption, Plan Administration, and Enforcement Issues, are case oriented. Because the law in these areas is developed principally by judicial decisions interpreting the law, the book reproduces many of the significant decisions on these topics. Other chapters, such as Chapters Eight and Nine on the Tax Nondiscrimination Rules, and Plan Operation, where case law plays

PREFACE

a relatively minor role, focus on the statute and its application. These chapters contain many problems designed to enhance the reader's appreciation and understanding of the governing statute.

Throughout the book, we cite both ERISA and the Internal Revenue Code with the expectation that the reader will consult and read the statutes. The reader of the book should have a comprehensive statutory supplement at hand and consult it frequently. A paraphrase of a statute is no substitute for the "real thing." While we believe that the statutes and cases are the best sources of understanding the material, we have by necessity often resorted to descriptive prose. Fortunately, we were able to use excerpts of many of the fine writings that describe and analyze the world of employee benefits, and we urge the user of this book to seek out the complete articles.

In editing cases, we have deleted some, but not all, case citations and citations to secondary sources. For ease of reading, we have not disclosed each omission with a "citations omitted." Case citations and footnotes from excerpted material have usually been omitted without disclosure. The footnotes that are included have been renumbered as indicated with brackets, [], around the numbers. We have indicated substantive deletions from cases or excerpted materials with ellipses. Any material bracketed, [], is an editorial insertion by the authors.

ERISA is codified in the U.S. Code, specifically in Title 29, § 1001 et seq. Many of those who work with ERISA, however, refer to its sections not by the U.S. Code, but by the original section numbers with which it was enacted. And so it is with those original section numbers that we refer to ERISA in this book. In the cases, where the courts usually use U.S. Code section cites, we have renumbered the ERISA citations with the original section numbers and so indicated with brackets, i.e. [].

This book represents a collaborative effort by the two authors. Each has contributed to every chapter. Primary responsibility for some of the chapters was allocated, however, as follows: Professor Frolik, Chapters 2, 5, 6, and 7; Professor Moore, Chapters 3, 4, 8 and 9. Excellent research assistance was provided by Stephanie Gallo and Danielle Hodnicki, students at the University of Pittsburgh School of Law, and Eric Smith, Tai Tucker, Stephen Barnes, Catherine Barrett and Gwendolyn Junge, students at the University of Kentucky College of Law. We thank these students for their contributions to this book. Our thanks also to the Document Technology Center of the University of Pittsburgh School of Law under the direction of LuAnn Driscoll, to Nancy Fritz, Amy Osborne, Carol Parris, and Susan Wild of the University of Kentucky College of Law Library, and to Adam Cohen, Brian Jones, and especially Carol Weiser for helpful discussions and comments on portions of the text.

Special thanks are due to the many authors and journals who have generously permitted us to reprint excerpts from their work. Citations to the material is found with the material in the book.

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