

ERISA

The Law and the Code

1993 Edition

Current Through May 3, 1993

Edited by

Paul F. Albergo
Dana J. Domone

Indexed by

Ellen A. Hennessy

ERISA

The Law and the Code

1993 Edition

Current Through May 3, 1993

Edited by

Paul F. Albergo

Managing Editor, BNA's Health Care Policy Report

and

former staff Editor, BNA Pension Reporter

and

Dana J. Domone

Editor, BNA's Compensation and Benefits Guide

and

former staff Editor, BNA Pension Reporter

Indexed by

Ellen A. Hennessy

Copyright © 1981, 1983, 1985-91, 1993
The Bureau of National Affairs, Inc.

Published by BNA Books
1250 23rd Street, N.W., Washington, D.C. 20037-1165

International Standard Book Number: 0-87179-783-6
International Standard Serial Number: 1050-4230
Library of Congress Number: 90-644912

Printed in the United States of America

ERISA

The Law and the Code

1993 Edition

Introduction

Development of the Law

The Employee Retirement Income Security Act was signed into law by President Gerald Ford on September 2, 1974, after years of deliberation and intensive debate. The law and related tax code sections have been amended frequently since that time, as outlined below.

1980

The first major changes in the law were enacted in September 1980, when President Jimmy Carter signed the Multiemployer Pension Plan Amendments Act of 1980 (PL 96-364).

Although ERISA itself remained virtually untouched for six years, a number of changes affecting pension and benefit plans were enacted through various tax laws that amended the qualified plan provisions of the Internal Revenue Code.

1981

In 1981, a series of savings incentive bills were introduced in Congress. Proposals were made to raise the limits on deductible contributions to individual retirement accounts and Keogh plans, encourage the adoption of employee stock ownership plans, and change the tax treatment of stock options. The retirement plan proposals and other savings incentive provisions eventually were consolidated and, in August 1981, President Ronald Reagan signed the Economic Recovery Tax Act (PL 97-34).

1982

In May 1982, a bill was introduced in the House to reduce the contribution and benefit limits for qualified corporate plans, modify the rules for integration with Social Security, tighten the rules for loans from plans to key employees, and limit the estate tax exclusion for retirement annuities paid to beneficiaries, among other changes in the pension tax area. Despite opposition from the pension industry, those proposals were modified and rolled into a revenue raising package introduced in an attempt to reduce budget deficits. The revenue package became the Tax Equity and Fiscal Responsibility Act of 1982 (PL 97-248) and was approved by Congress in August 1982 and signed by President Reagan, only a few short months after it was first introduced.

1984

Things were quiet in 1983, but on July 18, 1984, the Deficit Reduction Act (PL 98-369) was enacted, which added and amended tax code provisions in such areas as fringe benefits, cafeteria plans, and employee welfare plans. Several weeks later, on August 23, 1984, the Retirement Equity Act (PL 98-397) was enacted, which amended both tax code and ERISA provisions on vesting, participation, and joint and survivor annuities. Two other benefit laws also were enacted in 1984. PL 98-611 provided a two-year extension of the exclusion from gross income for educational assistance programs and PL 98-612 extended the exclusion for prepaid legal plans for one year.

1985

While Congress began debate on yet another tax reform law in 1985, it focused much of its attention on federal budget deficits, which resulted in passage of the Gramm-Rudman-Hollings balanced budget law (PL 99-177).

1986

Passage of the balanced budget law in 1985 led to some speculation during the early days of 1986 that the law could cause the death of the budget reconciliation bill then under consideration. However, the Consolidated Omnibus Budget Reconciliation Act of 1986 (PL 99-272) was passed by Congress and signed by President Reagan April 7 of that year. COBRA included provisions on continuation of employer-sponsored group health insurance for certain individuals and their dependents. In addition, Title XI of the law amended the single-employer pension plan provisions of ERISA. Title XI is cited as the Single-Employer Pension Plan Amendments Act of 1986.

The Tax Reform Act of 1986 (PL 99-514) was signed by President Reagan on October 22, 1986. The 1986 Tax Reform Act made extensive changes affecting employee pension and welfare benefit plans, including amendments to the rules on non-discrimination, coverage, participation, Social Security integration, vesting, and distributions.

The 99th Congress adjourned without passing a concurrent resolution (HConRes 395) that would have made mostly technical corrections to the 1986 TRA. Most of the earlier problems with the resolution had been worked out, but it was not passed because some members of Congress wanted to include controversial, substantive provisions.

The Omnibus Budget Reconciliation Act of 1986 (PL 99-509) was enacted on October 21, 1986. The law requires continued benefit accruals or allocations for employees who continue to work beyond normal retirement age and requires employers to offer health insurance coverage to retirees and dependents who otherwise would lose coverage because the employer had filed for Chapter 11 bankruptcy.

1987

President Reagan signed the Omnibus Budget Reconciliation Act of 1987 (PL 100-203) on December 22, 1987. The law tightened the funding requirements for defined benefit pension plans and increased the premium that single employer defined benefit plans must pay to guarantee a certain level of benefits. However, provisions that would have made technical corrections were dropped before the 1987 OBRA was signed into law, partly to ensure that the bill would comply with a deficit reduction agreement between the White House and Congress.

1988

President Reagan signed the Technical and Miscellaneous Revenue Act of 1988 on November 10, 1988 (PL 100-647). TAMRA included a number of provisions affecting employee benefits. TAMRA retained the 1989 effective date for the Section 89 non-discrimination rules, but relaxed some compliance issues. TAMRA also amended the tax sanctions for violation of the COBRA requirements, increased the excise tax on reversions of excess plan assets, made certain clarifying amendments to pension plan rules, amended the Section 457 rules, and extended for one year the exclusion from income of benefits from group legal service and educational assistance plans.

1989

On November 15, 1989, President George Bush signed PL 101-140, a law that increased the public debt limit and repealed Section 89. On December 19, 1989, President Bush signed the Omnibus Budget Reconciliation Act of 1989 (PL 101-239). OBRA 1989 modified COBRA health care continuation coverage rules and made numerous technical corrections to prior laws. It also amended civil penalties for fiduciary violations and repealed or limited a number of provisions on employee stock ownership plans.

1990

On November 5, 1990, President Bush signed the Omnibus Budget Reconciliation Act of 1990 (PL 101-508). OBRA 1990 extended tax breaks for tuition assistance and group legal service plans, increased the excise tax on reversions of excess assets to employers from plan terminations, raised plan termination insurance premiums, permitted the transfer of some excess assets to retiree health accounts, and made a number of technical changes such as eliminating obsolete provisions from the tax code.

Also in December 1990, President Bush signed PL 101-540, which was introduced and passed just before Congress adjourned for the November elections. This new law amended Title I of ERISA to require employer securities to include interest in publicly traded partnerships.

1991

Simplification of pension laws, expansion of retirement coverage, concern for the financial health of the Pension Benefit Guaranty Corporation, and reform of the health care system were among the topics discussed by Congress and the Bush administration throughout 1991 and 1992. However, despite the attention, only a few, minor changes to ERISA and its corresponding tax code sections were enacted during the second half of 1991.

On August 15, 1991, President Bush signed the Rural Telephone Cooperative Associations ERISA Amendments Act of 1991 (PL 102-89). The law removes from ERISA's definition of multiple employer welfare arrangements the welfare plans of rural telephone cooperative associations.

On December 15, 1991, President Bush signed emergency supplemental appropriations legislation (PL 102-229), which created a new ERISA subsection 4001(a)(14)(C). The provision was aimed specifically at preventing Carl Icahn, chairman and chief executive officer of Trans World Airlines Inc., from escaping responsibility for TWA's pension plan underfunding.

While the Federal Deposit Insurance Corporation Improvement Act of 1991, signed by President Bush December 19, 1991 (PL 102-242), does not amend ERISA or its corresponding tax code sections, it does contain provisions affecting benefit plans. Under the bill, pass-through coverage by the Federal Deposit Insurance Corporation would be allowed for benefit plan assets placed in well-capitalized financial institutions. However, pass-through coverage for bank investment contracts would be eliminated.

Also, the banking bill specifies that FDIC and other successors to failed financial institutions have the same obligation under ERISA Section 602 to offer group health coverage to former employees as the failed institution would have had if not for its failure.

On December 11, President Bush signed the Tax Extension Act of 1991 (PL 102-227), which extended for six months certain expiring tax provisions, including the provisions covering employer-provided educational assistance, group legal services plans, and health insurance costs of self-employed individuals. However, the six months lapsed

without the provisions being extended again or made permanent; the provisions expired at the end of June 1992.

1992

Congress passed two tax bills in 1992 (HR 4210 and HR 11) that would have extended some or all of the expiring provisions, among other things. However, President Bush vetoed both measures. An extension of all three tax breaks was included in HR 4210; the exclusion for group legal services was dropped from HR 11.

Nearly identical pension simplification provisions were included in both HR 4210 and HR 11. In addition, HR 11 would have expanded the availability of IRAs. However, these provisions, although mostly non-controversial, were killed with the veto of the tax bills and did not surface as separate legislation.

Despite the tax bill vetoes, two significant benefit changes were enacted in 1992.

On July 3, 1992, President Bush signed unemployment benefits legislation (PL 102-318) that is funded, in part, by a withholding tax on certain pension plan distributions. The law, the Unemployment Compensation Amendments of 1992, allows any portion of most distributions from a qualified pension plan or annuity or a tax-sheltered annuity to be rolled over tax free into an IRA or another qualified plan or annuity. In addition, the law requires qualified plans to permit participants to elect to have any distribution eligible for roll-over treatment transferred directly to an eligible transferee plan designated by the participant.

On October 24, 1992, President Bush signed the Comprehensive National Energy Policy Act of 1992 (PL 102-486), which includes a provision on the funding of health benefits for retired coal miners. The law requires companies who were party to labor agreements with the United Mine Workers of America as far back as 1950 to cover retiree health costs. In addition, excess union pension funds and interest on monies in the abandoned mine land reclamation fund would be transferred to the union's health benefit fund. Also, the law allows excess assets in qualified black lung benefit trusts to be used to pay accident and health premiums for retired miners. Another provision of the law expands the exclusion from taxable income for employer-provided transit subsidies while limiting the exclusion for employer-provided parking.

Organization of This Book

The material that follows includes as Part 1 the text of excerpts from the conference committee reports on the Unemployment Compensation Amendments and the Comprehensive National Energy Policy Act. Additional earlier legislative histories, including excerpts from conference reports on the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, the Section 89 Employee Benefit Plan Nondiscrimination and Qualification Rule Repeal Amendment, the Omnibus Budget Reconciliation Act of 1989, and the Omnibus Budget Reconciliation Act of 1990, are contained in a companion BNA book, *ERISA: Selected Legislative History, 1974-1991*.

Part 2 of this book includes the text of ERISA as amended.

Part 3, a new section in this edition, contains provisions of various laws that affect ERISA and the Internal Revenue Code but do not amend them.

Part 4 includes pertinent sections of the Internal Revenue Code. Several tax code sections have been added to this year's edition:

- Section 83, property transferred in connection with performance of services;
- Section 101, certain death benefits;
- Section 104, compensation for injuries or sickness;

- Section 117, qualified scholarships;
- Section 119, meals or lodging furnished for the convenience of the employer;
- Section 122, certain reduced uniformed services retirement pay;
- Section 152, dependent defined;
- Section 267, losses, expenses, and interest with respect to transactions between related taxpayers;
- Section 280G, golden parachute payments;
- Section 691, recipients of income in respect of decedents; and
- Section 7422, civil actions for refund.

Part 5 includes notes on effective dates and transitional rules from previous editions.

Part 6 is an index to ERISA and the Internal Revenue Code. In addition, this edition is cross-indexed to regulations printed in the BNA book *ERISA Regulations*, 1993 Edition, edited by Michael Kushner.

Provisions of ERISA and the Internal Revenue Code that were deleted by the Rural Telephone Cooperative Associations ERISA Amendments Act of 1991, emergency supplemental appropriations legislation, Tax Extension Act of 1991, Unemployment Compensation Amendments, and Comprehensive National Energy Policy Act are enclosed within boldface brackets [**]**. Provisions that were added are in *italics*. Editor's notes appear at the end of the subsection of the law or code to which they pertain, separated from the text by a row of diamonds. Sections in Parts 2, 3, and 4 that contain notes in Part 5 have been footnoted.

ERISA Finding List

Section		
U.S.C. ERISA		
1.	Short title and table of contents	2-3
Title I — Protection of Employee Benefit Rights		
Subtitle A — General Provisions		
1001.	2. Findings and declaration of policy	2-9
1002.	3. Definitions	2-9
1003.	4. Coverage	2-18
Subtitle B — Regulatory Provisions		
Part 1 — Reporting and Disclosure		
1021.	101. Duty of disclosure and reporting	2-18
1022.	102. Plan description and summary plan description	2-19
1023.	103. Annual reports	2-20
1024.	104. Filing with Secretary and furnishing information to participants	2-25
1025.	105. Reporting of participant's benefit rights	2-27
1026.	106. Reports made public information	2-27
1027.	107. Retention of records	2-28
1028.	108. Reliance on administrative interpretations	2-28
1029.	109. Forms	2-28
1030.	110. Alternative methods of compliance	2-29
1031.	111. Repeal and effective date	2-29
Part 2 — Participation and Vesting		
1051.	201. Coverage	2-30
1052.	202. Minimum participation standards	2-30
1053.	203. Minimum vesting standards	2-32
1054.	204. Benefit accrual requirements	2-37
1055.	205. Requirements of joint and survivor annuity and preretirement survivor annuity	2-42
1056.	206. Other provisions relating to form and payment of benefits	2-46
1057.	207. Temporary variances from certain vesting requirements	2-50

Section**U.S.C. ERISA**

1058.	208.	Mergers and consolidations of plans or transfers of plan assets	2-50
1059.	209.	Recordkeeping and reporting requirements	2-50
1060.	210.	Plans maintained by more than one employer, predecessor plans, and employer groups	2-51
1061.	211.	Effective dates	2-51

Part 3 — Funding

1081.	301.	Coverage	2-53
1082.	302.	Minimum funding standards	2-54
1083.	303.	Variance from minimum funding standard	2-65
1084.	304.	Extension of amortization periods	2-66
1085.	305.	Alternative minimum funding standard	2-67
1085a.	306.	Security for waivers of minimum funding standard and extensions of amortization period	2-67
1085b.	307.	Security required upon adoption of plan amendment resulting in significant underfunding	2-68
1086.	308.	Effective dates	2-69

Part 4 — Fiduciary Responsibility

1101.	401.	Coverage	2-69
1102.	402.	Establishment of plan	2-70
1103.	403.	Establishment of trust	2-70
1104.	404.	Fiduciary duties	2-72
1105.	405.	Liability for breach by co-fiduciary	2-73
1106.	406.	Prohibited transactions	2-74
1107.	407.	10 percent limitation with respect to acquisition and holding of employer securities and employer real property by certain plans	2-75
1108.	408.	Exemptions from prohibited transactions	2-78
1109.	409.	Liability for breach of fiduciary duty	2-81
1110.	410.	Exculpatory provisions; insurance	2-81
1111.	411.	Prohibition against certain persons holding certain positions	2-81
1112.	412.	Bonding	2-83
1113.	413.	Limitation of actions	2-84
1114.	414.	Effective date	2-84

Section**U.S.C. ERISA****Part 5 — Administration and Enforcement**

1131.	501.	Criminal penalties	2-85
1132.	502.	Civil enforcement	2-86
1133.	503.	Claims procedure	2-88
1134.	504.	Investigative authority	2-89
1135.	505.	Regulations	2-89
1136.	506.	Coordination and responsibility of agencies enforcing Employee Retirement Income Security Act and related federal laws	2-89
1137.	507.	Administration	2-90
1138.	508.	Appropriations	2-90
1139.	509.	Separability of provisions	2-90
1140.	510.	Interference with rights protected under Act	2-90
1141.	511.	Coercive interference	2-90
1142.	512.	Advisory council	2-91
1143.	513.	Research, studies, and annual report	2-91
1144.	514.	Effect on other laws	2-92
1145.	515.	Delinquent contributions	2-94

Part 6 — Continuation Coverage Under Group Health Plans

1161.	601.	Plans must provide continuation coverage to certain individuals	2-94
1162.	602.	Continuation coverage	2-94
1163.	603.	Qualifying event	2-96
1164.	604.	Applicable premium	2-96
1165.	605.	Election	2-97
1166.	606.	Notice requirements	2-97
1167.	607.	Definitions and special rules	2-98
1168.	608.	Regulations	2-99

Title II — Amendments to the Internal Revenue Code Relating to Retirement Plans

1001.	Amendment of Internal Revenue Code of 1954	2-99
-------	--	------

Subtitle A — Participation, Vesting, Funding, Administration, etc.**Part 1 — Participation, Vesting, and Funding**

Section
U.S.C. ERISA

1012.	Minimum vesting standards	2-99
1013.	Minimum funding standards	2-100

1017.	Effective dates and transitional rules	2-100
-------	--	-------

Part 5 — Internal Revenue Service

1052.	Authorization of appropriations	2-102
-------	---	-------

**Subtitle B — Other Amendments to the Internal Revenue Code Relating
to Retirement Plans**

2003.	Prohibited transactions	2-103
2004.	Limitations on benefits and contributions	2-104

2006.	Salary reduction regulations	2-105
-------	--	-------

Title III — Jurisdiction, Administration, Enforcement; Joint Pension Task Force, Etc.

Subtitle A — Jurisdiction, Administration, and Enforcement

1201.	3001.	Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury . .	2-106
1202.	3002.	Procedures with respect to continued compliance with requirements relating to participation, vesting, and funding standards	2-107
1203.	3003.	Procedures in connection with prohibited transactions . . .	2-109
1204.	3004.	Coordination between the Department of the Treasury and the Department of Labor	2-109

Section**U.S.C. ERISA****Subtitle B — Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force; Studies****Part 1 — Joint Pension, Profit-Sharing, and Employee Stock Ownership Plan Task Force**

1221.	3021.	Establishment	2-110
1222.	3022.	Duties	2-110

Part 2 — Other Studies

1231.	3031.	Congressional study	2-110
1232.	3032.	Protection for employees under federal procurement, construction, and research contracts and grants	2-111

Subtitle C — Enrollment of Actuaries

1241.	3041.	Establishment of Joint Board for the Enrollment of Actuaries	2-113
1242.	3042.	Enrollment by Joint Board	2-113
	3043.	Amendment of Internal Revenue Code	2-113

Title IV — Plan Termination Insurance**Subtitle A — Pension Benefit Guaranty Corporation**

1301.	4001.	Definitions	2-114
1302.	4002.	Pension Benefit Guaranty Corporation	2-117
1303.	4003.	Investigatory authority; cooperation with other agencies; civil actions	2-119
[1304.]	[4004.]	[Temporary authority for initial period]	2-121
1305.	4005.	Establishment of pension benefit guaranty funds	2-121
1306.	4006.	Premium rates	2-123
1307.	4007.	Payment of premiums	2-127
1308.	4008.	Report by the corporation	2-128
1309.	4009.	Portability assistance	2-128

Subtitle B — Coverage

1321.	4021.	Plans covered	2-129
1322.	4022.	Single employer plan benefits guaranteed	2-130
1322A.	4022A.	Multiemployer plan benefits guaranteed	2-133

Section		
U.S.C.	ERISA	
1322B.	4022B.	Aggregate limit on benefits guaranteed 2-138
1323.	4023.	Plan fiduciaries 2-138

Subtitle C — Terminations

1341.	4041.	Termination of single employer plans 2-138
1341A.	4041A.	Termination of multiemployer plans 2-143
1342.	4042.	Institution of termination proceedings by the corporation 2-144
1343.	4043.	Reportable events 2-147
1344.	4044.	Allocation of assets 2-148
1354.	4045.	Recapture of certain payments 2-151
1346.	4046.	Reports to trustee 2-151
1347.	4047.	Restoration of plans 2-152
1348.	4048.	Date of termination 2-152
[1349.]	[4049.]	[Distribution to participants and beneficiaries of liability payments to section 4049 trust] 2-152

Subtitle D — Liability

1361.	4061.	Amounts payable by the corporation 2-153
1362.	4062.	Liability for termination of single-employer plans under a distress termination or a termination by the corporation 2-153
1363.	4063.	Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups 2-155
1364.	4064.	Liability on termination of single-employer plans under multiple controlled groups 2-156
1365.	4065.	Annual report of plan administrator 2-156
1366.	4066.	Annual notification to substantial employers 2-157
1367.	4067.	Recovery of liability for plan termination 2-157
1368.	4068.	Lien for liability 2-157
1369.	4069.	Treatment of transactions to evade liability; effect of corporate reorganization 2-159
1370.	4070.	Enforcement authority relating to terminations of single-employer plans 2-159
1371.	4071.	Penalty for failure to timely provide required information 2-160

Section

U.S.C. ERISA

Subtitle E — Special Provisions for Multiemployer Plans

Part 1 — Employer Withdrawals

1381.	4201.	Withdrawal liability established	2-161
1382.	4202.	Determination and collection of liability; notification of employer	2-161
1383.	4203.	Complete withdrawal	2-161
1384.	4204.	Sale of assets	2-163
1385.	4205.	Partial withdrawals	2-164
1386.	4206.	Adjustment for partial withdrawal	2-166
1387.	4207.	Reduction or waiver of complete withdrawal liability	2-167
1388.	4208.	Reduction of partial withdrawal liability	2-167
1389.	4209.	De minimis rule	2-169
1390.	4210.	No withdrawal liability for certain temporary contribution obligation periods	2-169
1391.	4211.	Methods for computing withdrawal liability	2-170
1392.	4212.	Obligation to contribute; special rules	2-175
1393.	4213.	Actuarial assumptions, etc.	2-175
1394.	4214.	Application of plan amendments	2-176
1395.	4215.	Plan notification to corporation of potentially significant withdrawals	2-176
1396.	4216.	Special rules for section 404(c) plans	2-176
1397.	4217.	Application of part in case of certain pre-1980 withdrawals	2-177
1398.	4218.	Withdrawal not to occur merely because of change in business form or suspension of contributions during labor dispute	2-177
1399.	4219.	Notice, collection, etc., of withdrawal liability	2-178
1400.	4220.	Approval of amendments	2-180
1401.	4221.	Resolution of disputes	2-180
1402.	4222.	Reimbursements for uncollectible withdrawal liability . . .	2-181
1403.	4223.	Withdrawal liability payment fund	2-182
1404.	4224.	Alternative method of withdrawal liability payments	2-183
1405.	4225.	Limitation on withdrawal liability	2-184

Part 2 — Merger or Transfer of Plan Assets or Liabilities

1411.	4231.	Mergers and transfers between multiemployer plans	2-185
1412.	4232.	Transfers between a multiemployer plan and a single-employer plan	2-185

Section**U.S.C. ERISA**

1413.	4233.	Partition	2-187
1414.	4234.	Asset transfer rules	2-187
1415.	4235.	Transfers pursuant to change in bargaining representative	2-187

**Part 3 — Reorganization; Minimum Contribution Requirement for
Multiemployer Plans**

1421.	4241.	Reorganization status	2-189
1422.	4242.	Notice of reorganization and funding requirements	2-191
1423.	4243.	Minimum contribution requirement	2-191
1424.	4244.	Overburden credit against minimum contribution requirement	2-194
1425.	4244A.	Adjustments in accrued benefits	2-195
1426.	4245.	Insolvent plans	2-197

Part 4 — Financial Assistance

1431.	4261.	Financial assistance	2-199
-------	-------	--------------------------------	-------

Part 5 — Benefits After Termination

1441.	4281.	Benefits under certain terminated plans	2-199
-------	-------	---	-------

Part 6 — Enforcement

1451.	4301.	Civil actions	2-200
1452.	4302.	Penalty for failure to provide notice	2-201
1453.	4303.	Election of plan status	2-201

Subtitle F — Transition Rules and Effective Dates

	4401.	Amendments to Internal Revenue Code of 1954	2-201
1461.	4402.	Effective date; special rules	2-202