



Reply to the Attention of:

NOV 21 1979

NOV 21 1979

Ms. Susan M. Vander Horn  
Wisconsin Steel  
410 North Michigan Avenue  
Chicago, Illinois 60611

OPINION 79-82A

104(b)  
104(b)(4)  
103(a)

Dear Ms. Vander Horn:

This is in reply to your letter concerning the provisions of sections 104 and 105 of the Employee Retirement Income Security Act of 1974 (ERISA). I regret that our heavy workload has resulted in a delay in responding to your letter.

You state in your letter that the Pension Security Action Company (PSAC) of Addison, Illinois, requested pension information from you on Mr. Theodore Corpus, an employee of Wisconsin Steel. This information included copies of certain documents and a statement of accrued benefits, and was to be sent to the PSAC in accordance with a "Pension Information Authorization" included on the request form and signed by Mr. Corpus.

You have asked for an advisory opinion from the Department of Labor as to whether you are required under sections 104 and 105 of ERISA to furnish this information to a third party (PSAC) if authorized by an employee.

Section 104(b)(4) of ERISA provides that "the administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence".

The obligations of the plan administrator under section 104 of ERISA are set forth by regulation at 29 CFR 2520.104b-1(b) as follows:

(b) Fulfilling the disclosure obligation--(1) Where certain material, including reports, statements, and documents, is required under Part 1 of the Act and this part to be furnished either by direct operation of law or on individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.

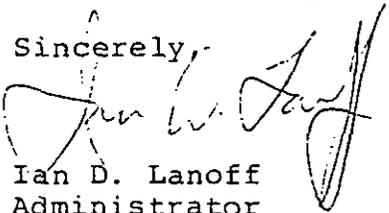
(2) For purposes of section 104(b)(4) of the Act, materials furnished upon written request shall be mailed to an address provided by the requesting participant or beneficiary or personally delivered to the participant or beneficiary.

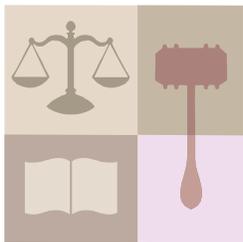
Section 105(a) of ERISA provides, that "each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information--(1) the total benefits accrued, and (2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable."

It is the view of the Department of Labor that if information is required to be furnished to a participant under sections 104(b)(4) and 105(a) of ERISA, the information must be furnished to a third party where, as in the circumstances described in your letter, the participant has authorized in writing the release of the information to such third party.

~~This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure including section 10 thereof relating to the effect of advisory opinions.~~

Sincerely,

  
Ian D. Lanoff  
Administrator  
of Pension and Welfare  
Benefit Programs



Western States Pension Assistance Project  
California Senior Legal Hotline  
444 North 3<sup>rd</sup> Street, #312 ~ Sacramento, CA 95811  
Telephone: (916) 930-4923 ~ Fax: (916) 930-4993  
[www.seniorlegalhotline.org](http://www.seniorlegalhotline.org)

March 23, 2011

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Benefits Service Center  
P.O. Box 770003  
Cincinnati, OH 45277-0072

Re: Surviving Spouse Benefits for Jan Smith  
Altria Retirement Plan Participant John Smith

Dear Altria Retirement Plan Representatives:

The Western States Pension Assistance Project is a nonprofit law office that assists individuals with questions regarding their pensions and retirement savings plans. Our services are provided free of charge. I am writing on behalf of Jan Smith, the surviving spouse of former Altria Retirement Plan (“the Plan”) participant John Smith. Ms. Smith’s signed authorization is enclosed.

I am writing this letter in the hope that you will help us resolve a problem associated with Ms. Smith’s pension benefit. To date, the Plan has refused to pay Ms. Smith’s pension benefit in accordance with the election her late husband made prior to his death. This failure to pay her pension benefit in accordance with the timely election Mr. Smith made violates Internal Revenue Code (the Code) section 417(c)(1) and Treasury Regulation 1.401(a)-20 Q&A 18. Violation of these provisions can place a retirement plan’s qualified status at risk under the Code.

Factual Background

Mr. Smith worked as an accountant with Mission Viejo Company from 1979 through 1997. Before he passed away, he was a participant in the Plan. In August 2010, Mr. Smith contacted the Altria Benefits Center in order to receive a pension application. He filled out the retirement application, designating his wife, Jan Smith, as the beneficiary and selecting the 75 percent qualified joint & survivor annuity (QJSA) option. (See Exhibit A) This

application was signed and notarized on August 24, 2010 and mailed shortly thereafter. On September 26, 2010, Mr. Smith passed away.

According to the Fidelity Net Benefits website, the Plan received Mr. Smith's signed application on August 29, 2010, reviewed the application for accuracy on September 2, 2010, and calculated the benefit on September 3, 2010. (See Exhibit B) Mr. Smith also received an email from Altria Group Benefits Center on September 2, 2010, which stated that they had reviewed his pension forms and found them to be free of error or omissions. (See Exhibit C) Therefore, there should be no doubt that the Plan received and processed Mr. Smith's signed application requesting a 75 percent QJSA before his death.

However, to Ms. Smith's surprise, she received a letter dated November 11, 2010 indicating that she would receive only \$452.43 per month instead of the \$657.66 per month under the 75 percent QJSA option. (See Exhibit D) Ms. Smith called the Plan to discuss this and was told that she is due a qualified pre-retirement survivor annuity (QPSA) instead of the 75 percent QJSA that her husband elected.

#### Internal Revenue Code and Treasury Regulations

Treasury Regulation 1.401(a)-20 Q&A 18 spells out the requirement for a Qualified Pre-retirement Survivor Annuity (QPSA) in a qualified defined benefit plan such as the Altria Retirement Plan.

The regulation states in relevant part, **"If the participant elects before the annuity starting date a form of joint and survivor annuity that satisfies the requirements for a QJSA and dies before the annuity starting date, the elected form is treated as the QJSA and the QPSA must be based on such form."**

While the Plan is correct that Ms. Smith is entitled to a preretirement survivor annuity, they are not only incorrect to ignore Mr. Smith's election of a 75 percent QJSA, but have placed the Plan in contravention of the Internal Revenue Code's minimum qualification standards by doing so.

A QPSA is a preretirement annuity payable to the surviving spouse that is based on a fiction – *if the individual had retired with the QJSA on the day immediately preceding his death*. In other words, the survivor benefit assumes that the individual actually retired with a Joint and Survivor Annuity and died the next day. (IRC §417(c)) However, the cited regulation makes clear that – as in our precise situation – where a participant has elected a 75 percent survivor annuity (an annuity that would meet ERISA's minimum qualification standards for a QJSA) and dies before the annuity start date, the resulting QPSA must be based on the *elected* benefit, not the plan's default QJSA benefit. Contrary to statements made by representatives from the Plan, the fact that Mr. Smith died before the actual annuity start date is irrelevant. Treasury Regulation 1.401(a)-20 requires the Plan to pay Ms. Smith the 75 percent survivor annuity in accordance with Mr. Smith's timely election.

Conclusion

The Internal Revenue Code and Treasury Regulations clearly dictate that Mr. Smith's election of a 75 percent QJSA must be honored. We kindly request that the Altria Retirement Plan begin making payments to Ms. Smith in accordance with the 75 percent QJSA her husband timely elected before his death. Commencement of benefits in the correct amount will alleviate the necessity of my having to confirm these Plan failures with the Internal Revenue Service.

I look forward to hearing from you. You can contact me at (916) 930-4923. You may also direct your written response to me at: Western States Pension Assistance Project, California Senior Legal Hotline, 444 N. 3rd Street, Suite 312, Sacramento, CA 95811. Thank you in advance for your attention to this matter.

Sincerely,

Justin Freeborn  
Staff Attorney

cc: Ms. Jan Smith

John Doe  
123 Mystery Lane  
Confusion, MI

September 6, 2001

**VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

Plumbers and Pipe Fitters Retirement Plan  
1234 Corruption Court  
Los Angeles, CA 91790

Attn.: Mr. Wolfe, Plan Administrator

**Re: John Doe, SSN: 123-45-7890; DOB: 6/19/32**

Dear Plan Administrator,

I am writing to request information regarding my retirement benefits under the Plumbers and Pipe Fitters Retirement Plan (Plan). I held a variety of plumbing and pipefitting positions with numerous Los Angeles Area employers from March 1961 to September 1987. I was a card-carrying union member (Number 92749020) from March 1961 until I took a withdrawal in May of 2001. So that I may evaluate my rights to benefits under the Plan, please send me the following documents and information:

1. Complete copies of the Summary Plan Description (with Summary/ies of Material Modifications) Plan Document the Plan as they were in effect on my last date of covered employment under the Plan; and the current Plan if different.
2. Complete copies of the collective bargaining agreements between the Pipefitters and the following covered employers for whom I worked:
  - Larry's Pipe                      March, 1961 through April 1979
  - Jim's Industrial Supply      May 1979 through January 1981
  - Phoebe's Plumbing          February 1981 through September 1987
3. Copies of any and all documentation necessary to verify the calculation of my benefits under the Plan including, but not limited to: records or summaries from which can be ascertained the years and/or portions of years for which I was receiving or should have received credit under the Plan; benefit calculation logs and worksheets, etc.
4. A copy of my latest Individual Benefits Statement and Summary Annual Report

These requests are made pursuant to Sections 104 and 503 of the Employee Retirement Income Security Act of 1974 (ERISA) and applicable Department of Labor Regulations. I would be happy to forward you any reasonable duplication fees related to this request and look forward to your response within 30 days. I thank you in advance for your prompt attention to this matter.

Cordially,

John Doe

John Doe  
123 Mystery Lane  
Confusion, MI

Date

**VIA CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

Big Company Savings and Retirement Plan  
1234 Corruption Court  
Los Angeles, CA 91790

Attn.: Mr. Wolfe, Plan Administrator

**Re:        John Doe, SSN: 567-89-0123; DOB: 6/19/32**

Dear Plan Administrator,

I am requesting information regarding benefits under the Big Company Savings and Retirement Plan or Plans. I held the position of Assistant Accounting Clerk at the Big Company's El Segundo location from March 1961 to September 1987.

To evaluate my rights under any pension or retirement savings plan or plans offered by the Big Company during my employment there, please send me the following:

1. Summary Plan Descriptions (with Summary/ies of Material Modifications) and complete Plan Documents for any Big Company Plans that may have covered me during my employment, as they were in effect on my last date of covered employment under the plan.
2. A copy of my complete pension file including, but not limited to: records or summaries from which can be ascertained the years and/or portions of years for which I was receiving or should have received credit under the Plan; all documents and correspondence between the Plan and myself.
3. Any other information or documentation necessary to verify the accuracy of my benefit calculation(s) under the plan(s) that may have covered me during my employment.
4. Any forms, instructions or other documentation necessary to perfect a claim for benefits under the plan(s) that may have covered me during my employment.

These requests are made pursuant to Sections 104 and 503 of the Employee Retirement Income Security Act of 1974 (ERISA) and applicable Department of Labor Regulations. I will forward any reasonable duplication fees related to this request and look forward to your response within 30 days. Thank you for your attention to this matter.

Cordially,

John Doe

# PENSION RIGHTS CENTER

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1140 19TH STREET, NW SUITE 602 WASHINGTON, DC 20036-6608  
TEL: 202-296-3776 FAX: 202-833-2472  
E-MAIL: pnsnrights@aol.com

## VIA FACSIMILE AND CERTIFIED MAIL

September 16, 2003

Administrative Committee for the Widget Industries Inc. Retirement Plan  
Attention: Bill Seargent  
Mail Stop 49L-01  
P.O. Box 655907  
Lawless, TX 12345

W.J. Gerhardt  
(or acting Plan Administrator of Widget Industries, Inc. Retirement Plan)  
Widget Industries, Inc.  
4321 West Boulevard  
Lawless, TX 12345

Dear Plan Administrator and/or Administrative Committee:

Pursuant to Section 503 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and Department of Labor regulations enacted thereunder, our client, James Spence, Jr. (SSN: 459-62-5895) hereby appeals a denial of benefits (“denial”) under the Widget Industries, Inc. Retirement Plan (the “Plan”). The denial, a refusal to re-calculate his monthly retirement benefit from the Plan, was communicated in a letter from Bill F. Seargent, Director of Human Resources and Administration, dated November 7, 2002. Mr. Spence now timely appeals the plan’s failure to include all appropriate compensation in the calculation of his benefit.

Mr. Spence thanks the Plan for its courteous assistance in providing necessary documents and granting extensions for filing this appeal.

### **I. Factual Background.**

James W. Spence, Jr. began working for the corporate predecessor of Widget Industries, Inc. (“the Company”) in February of 1965, shortly after his 23<sup>rd</sup> birthday. Mr. Spence worked diligently for the Company for over three decades, working whichever shift the Company asked him to work. Throughout this career, Mr. Spence – also at the request of the Company – consistently worked considerable hours in addition to the normally scheduled workweek. In addition to extended work hours through the week, Mr. Spence was also required to work on weekends and many holidays. While compensated for the majority of this time, Mr. Spence also

worked in excess of 60 hours per workweek on countless occasions throughout his tenure with the company. Per Company policy, hours worked beyond 60 in a seven-day period were uncompensated.<sup>1</sup>

On November 28, 2000, Company CEO Gordon L. Williams announced the “Quick Start” retirement incentive to Company employees in a letter. One month later, Mr. Spence met with Company representatives Betty Daniels and Jill Vasquez to discuss the amount of pension benefit he would be entitled to if he chose to retire under the Plan’s “Quickstart Voluntary Retirement” provisions. The estimate for Mr. Spence’s benefit at that time was \$3,563.11 per month (until reduction at age 62 to \$2290.51 per month). This estimate did not incorporate shift bonuses or the overtime that Mr. Spence worked in its salary computation, and the Company representatives acknowledged that it was not accurate. Mr. Spence asked how the estimate was arrived at so that he could make his own calculation. The Company representatives he met with claimed not to know precisely how the estimate was arrived at, but assured Mr. Spence that the estimate would be corrected in a “true-up” in mid-2001. Mr. Spence refused to sign his retirement papers until he knew exactly how much his pension would be.

The identical estimate was presented to James and his wife Wilma during a meeting with Ms. Vasquez in January 2001. Despite the fact that Ms. Vasquez agreed (as in the prior meeting) that the figures were inaccurate, she insisted that Mr. and Mrs. Spence would be happy with the results when Mr. Spence’s benefit was finally computed later that year, and that they could “trust” the Company. Ms. Vasquez dissuaded the Spence’s from looking at the underlying calculations or examining the information these calculations were based on, and told them that they had to sign retirement papers *that day*. In reliance on Ms. Vasquez’s assurances of eventually correct benefits and statements that the opportunity for the early retirement package was about to be lost, Mr. Spence signed retirement papers at that meeting. Mr. Spence retired from the Company as of February 1, 2001.

In May of 2001, Mr. Spence received a letter from the Company informing him that the benefit estimate he had been shown earlier was correct (\$3,563.11 per month to age 62 and \$2290.51 per month thereafter). As the month progressed, Mr. Spence contacted Mr. B.J. Fernwood, Team Leader of Plan Administration, who also agreed that there were mistakes in the calculations. First in May, and then again in July, Mr. Fernwood recalculated Mr. Spence’s benefit, upon realizing mistakes in the rate of pay to be used and the amount of overtime to be included. Ultimately, in a letter dated July 26, 2001, Mr. Fernwood informed Mr. Spence that his monthly benefit should actually be \$4,228.47 per month until reduction at age 62 to \$2,955.87, and that this correction would be retroactive to his annuity start date.

Thirteen months later, in August of 2002, Mr. and Mrs. Spence were contacted by the Company’s benefits department and told that their benefit had been improperly calculated; that the actual monthly benefit should be \$3,619.35 to age 62 and \$2,346.75 thereafter, and that the Spences had been overpaid by \$11,573.28. The communication informed them of a proposed

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<sup>1</sup> See Widget Industries, Inc. Policy No. H0-013 “Overtime for Employees Directed to Work Extended Work Weeks” (page 3, “EWW Compensation, continued”).

“correction” to their monthly benefit from that point forward, reducing the monthly amount to the “correct” pension figure, then further decreasing the monthly amount by \$609.12 in an effort to reclaim the alleged overpayment.

Mr. Spence sought subsequent meetings and communications with Company benefits specialists and other human resources management and staff in an attempt to fully understand what had happened to the benefits he had been assured were accurate, only to receive vague, general explanations in return. Perhaps sensing the distress that no less than five benefit estimates or calculations had caused Mr. Spence, or perhaps in recognition of his nearly thirty years of tireless service to the Company, the Plan ultimately “forgave” the alleged overpayment. However, because no clear explanation of his many retirement calculations was ever presented to him, and also due to the continued discrepancy between the Plan’s amount of compensation used in his pension calculation and his own pay records, Mr. Spence continued to contact Company representatives and protest his benefit amount.

## **II. Administrative/Procedural Summary.**

As noted above, Mr. Spence tentatively agreed to a monthly salaried retirement benefit of \$3,563.11 (electing a 100% contingent annuitant and level income option) in documents dated January 3, 2001. Mr. Spence was notified of the results of the company’s first “true up” in a letter from Judy Stewart, Quick Start Project Team Leader dated May 18, 2001. Mr. Spence’s subsequent phone calls resulted in upward revisions of his monthly benefit by Mr. Fernwood dated May 29, 2001 and July 26, 2001 respectively.

Mr. Spence was contacted by the Company on August 10, 2001 and met with plan representatives Douglas Riley and Janet Livengood on August 20, 2001, when Mr. Spence made direct requests for information to calculate his benefit. In a letter dated September 10, 2001, Charlotte Gray, Benefits Team Leader restated the information conveyed during the prior communications and apprised Mr. Spence of his right to appeal the Plan’s calculation. Mr. Spence exercised this right of formal appeal in a letter to Bill Seargent dated September 13, 2002.

On November 7, 2002, Mr. Seargent tendered the Plan’s denial of Mr. Spence’s request for recalculation. The letter stated that proper application of the Plan’s terms resulted in the “corrected” monthly benefit of \$3,619.35 (until age 62). The letter then forgave the \$11,573.28 overpayment made as a result of the Plan’s calculation error and abandoned attempts to recoup its overpayment through benefit deduction. The letter also apprised Mr. Spence of his opportunity to appeal the denial.

In a letter dated December 18, 2002, Mr. Seargent, on behalf of the Plan, granted a 60-day extension to the appeal deadline in light of Mr. Spence’s increasing chest pains, which ultimately required bypass surgery. James needed additional recovery time and in response to the Spences written request Mr. Seargent, on behalf of the Plan, granted an additional six-month extension by letter dated March 4, 2003. On August 28<sup>th</sup>, attorney Stephen Macintosh, on behalf of the Plan,

granted a two-week extension to the appeal deadline to allow counsel to review recently provided Plan documents.

### III. Discussion.

#### A. The Plan's calculation of Mr. Spence's pension, by failing to consider all appropriate "Other Includable Pay," constitutes a wrongful denial of benefits.

The Plan has calculated Mr. Spence's pension benefit in such a manner as to exclude that portion of Extended Workweek compensation that falls on a paid holiday. The Plan justifies this practice by labeling this excluded time as "Holiday Straight Time." However, a plain and common sense reading of the unambiguous language of the Plan requires that this form of compensation be included in "Other Includable Pay" as part of Mr. Spence's "Rate of Annual Salary" for Plan Years 1997, 1998, and 2000.

Section 8.04 explains the manner in which Rate of Annual Salary is determined for purposes of calculating participants' pension benefits. Specifically, § 8.04 (a) provides that the Rate of Annual Salary is comprised of a participant's Annual Base Rate of Pay as of December 31<sup>2</sup> plus Other Includable Pay. The terms Annual Base Rate of Pay and Other Includable Pay are defined in Exhibit B of the Plan by separate listings of those types of compensation included in each, and one list of compensation types specifically excluded from both definitions. For purposes of this Appeal, we need only note that "Holiday" pay is specifically included in the definition of Annual Base Rate of Pay; that Extended Workweek is specifically included in the definition of Other Includable Pay; and that the term "Holiday Straight Time Pay" is not among the list of those compensation types specifically excluded from either Annual Base Rate of Pay or Other Includable Pay, nor is that term present *anywhere* in the plan document. In other words, the plan document disallows the exclusion of any kind of compensation from Other Includable Pay not listed elsewhere in Exhibit B.

The Summary Plan Description cannot be read to contradict the plain meaning of the Plan as described above, as it is virtually silent on the definition of what constitutes Rate of Annual Salary for purposes of pension calculation.<sup>3 4</sup> If the benefit calculation per the terms of the Plan

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<sup>2</sup> While a close examination of the underlying pension calculation worksheets seem to clarify that Annual Base Rate of Pay as of December 31 means that the Plan looks at the last 40 hours of compensated time in the calendar year, multiplied by 52; and while it appears that this approach to annual compensation tends to benefit those employees who end the year with a higher salary than they began the year with, the average participant in the plan would not be able to glean this calculation methodology from a plain English reading of the plan document. *See* 29 C.F.R. §2520.102-2(a).

<sup>3</sup> Further, the term is not even present in the Summary Plan document, which offers only that Final Annual Compensation is used as a multiplier in the pension formula, defining final Average Compensation as an average of the participant's highest three years of compensation of the last 10. Clearly, the average plan participant would not be able to calculate their benefits by examining any combination of the documents to which they have a statutory right to examine. *Id.*

<sup>4</sup> The Conference Report on ERISA states that a "written plan instrument is to be required in order that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan."

requires the elimination of Extended Workweek time worked on a holiday and otherwise compensated by Holiday Pay, this would have had to be stated with clarity in the Summary Plan Description. Department of Labor regulations provide that “[a]ny description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure, or otherwise made to appear unimportant.”<sup>5</sup>

Neither may Widget policies be read to contradict the plain meaning of the Plan with regard to the required inclusion of all Extended Workweek time as part of Other Includable Pay within the pension calculation. The rate of compensation for Extended Workweek time on a paid holiday is referenced in the current Widget Employee Handbook at page 26. It states, “ Salaried exempt employees required to work on a holiday will receive straight-time pay for the hours worked, plus holiday pay.” That straight-time worked on a holiday as referenced here relates only to the rate, and not the “nature” of the time is also reinforced by corporate Policy HO-013, where it is clarified that the straight time rate is paid for time worked on paid holidays immediately following the section clarifying the various compensation rates available to salaried exempt employees working Extended Workweek hours for non-holiday time.<sup>6</sup> Mr. Spence’s Extended Workweek rate of compensation was, in fact, his straight time rate (due to the level of his base salary). While these statements of policy read together might suggest that in certain circumstances, Extended Workweek time worked on a paid holiday might be compensated at a rate different than other Extended Workweek time, it cannot be read to mean that time worked on a holiday is not Extended Workweek time. In fact, Widget policy actually confirms that time worked on midweek paid holidays is work above and beyond the time worked in a normal workweek. Per Widget policy, paid holidays are considered part of a normal, 40-hour workweek.<sup>7</sup> Thus, the straight time pay received for the actual work on a paid vacation day is over and above time in a normal workweek, and is therefore Extended Workweek time. None of these statements of policy suggest that Extended Workweek time worked on a holiday should not be included in Other Includable Pay as part of the pension calculation under the Plan. Indeed, they confirm that what the Plan has artificially labeled “Holiday Straight Time” is in fact Extended Workweek time.<sup>8</sup>

Mr. Spence’s own experienced understanding of Company practices further substantiates that time worked on a midweek paid holiday, regardless of the rate at which that time was compensated, was in practice and in fact Extended Workweek time, and should be included in the calculation of pension benefits under the Plan. James confirms that salaried exempt employees had to receive pre-approval to work on a midweek paid holiday, just like they did for all Extended Workweek time; that staff and managerial employees referred to time worked on a midweek paid holiday, time above eight hours in a day and time on weekends in excess of 40 in a workweek as Extended Workweek; and that just like time worked on a midweek paid holiday,

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<sup>5</sup> 29 C.F.R. §2520.102-2(b)

<sup>6</sup> Widget Industries, Inc. Policy No. HO-O13 “Overtime for Employees Directed to Work Extended Workweeks.” That policy’s declared purpose is to “detail[] the procedure for compensating exempt salaried employees who are scheduled and approved to work extended work weeks within the Company.”

<sup>7</sup> See Widget Industries, Inc. Policy No. HO-O13 “Overtime for Employees Directed to Work Extended Workweeks.” (“Computation and Payment” subheading regarding absences lists paid holiday as ordinary time worked in computing a 40 hour normal workweek).

<sup>8</sup> Indeed, the first time James Spence experienced the term “Holiday Straight Time” was in post-retirement writings from the Plan, none of which actually defined the term, but merely used it as a label.

and time above eight hours in a day and time on weekends in excess of 40 in a workweek were requested using the same Extended Workweek form.<sup>9</sup>

Finally, even after multiple requests, the Plan has been unable to provide any documentation that supports an interpretation of the Plan that carves Holiday Straight Time – a term that is not present in the plan document, the Summary Plan Description, the Widget Employee Handbook, or the Widget policy on “Overtime for Employees Directed to Work Extended Work Weeks” – out of the clear definition of Other Includable Pay.

Were it the intent of the Plan to eliminate the conceptual “Holiday Straight Time” from the definition of Other Includable Pay, several options would be available. The plan could be amended to specifically define the term Extended Workweek as not inclusive of time worked on midweek paid holidays. Perhaps more importantly, the Plan and other plan-related documents (such as the employee handbook and SPD) could be amended to include the term “Holiday Straight Time,” its definition and its potential reduction effect on the calculation of pension benefits. A simple Plan amendment of this nature would be to ensure that the term “Holiday Straight Time” appears among those items listed in Plan Exhibit B, as specifically excluded from the definitions of Annual Base Rate of Pay and Other Includable Pay.

As the Plan is currently written, an interpretation of Other Includable Pay that does not include all forms of Extended Workweek, including that which is worked on midweek paid holidays, is simply incompatible with the Plan’s patently clear terms. While ERISA provides plan administrators with wide discretionary latitude to interpret their own plan documents, that discretion is not completely unfettered. Indeed, an interpretation that is in contradiction to unambiguous plan language constitutes an arbitrary and capricious abuse of that discretion.<sup>10</sup> As discussed above, the Plan’s present interpretation of Other Includable Pay exceeds the administrator’s discretionary power and, in the case of James Spence, constitutes a wrongful benefit denial.

**B. A. Defining compensable time worked on mid-week paid holidays as something other than Extended Workweek time fails to consider all appropriate “Other Includable Pay” in the accurate calculation of pension benefits, is in contravention of the Plan’s clear terms and constitutes a breach of fiduciary duty.**

ERISA § 404(a)(1)(D) requires that plan fiduciaries act in accordance with plan documents, insofar as they are in compliance with governing law. As discussed above, failure to include time worked on midweek paid holidays as Extended Workweek time within the larger category of Other Includable Pay is a contradiction of the Plan’s unambiguous language. Such a failure to comply with the clearly written terms of the Plan constitutes a breach of fiduciary duty.

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<sup>9</sup> See Declaration of James W. Spence, Jr.

<sup>10</sup> “[I]f an administrator interprets an ERISA plan in a manner that directly contradicts the plain meaning of the plan language, the administrator has abused his discretion even if there is neither evidence of bad faith nor of a violation of any relevant administrative regulations.” *Gosselink v. AT&T, Inc.*, 272 F. 2d 722, 727 (5<sup>th</sup> Cir., 2001).

#### IV – Remedy.

The Plan *must* include the following additional amounts of “Other Includible Pay” (formerly defined by the Plan as “Holiday Straight Time”) in each of the following Plan Years:<sup>11</sup>

1997: \$1,148.98	This amount includes 12/96 payments made in 1/97 because Plan § 8.04 states that the Rate of Annual Salary includes all Other Includible Pay “paid <i>during</i> the year for which ‘Rate of Annual Salary’ is being determined.”
1998: \$442.09	This amount includes 12/97 payments made in 1/98 for the reasons stated above.
2000: \$252.40	

The inclusion of the above Extended Workweek figures in Other Includible Pay yields the following Rates of Annual Salary:

1997: \$83,149.38
1998: \$83,346.63
2000: \$84,173.30

These years are averaged into a *corrected* Final Average Salary of \$83,556.44, which results in a revised monthly benefit of \$3,643.29, or an increase of \$23.94 to Mr. Spence’s present monthly pension benefit. Our calculations of these amounts match the Plan’s projected figures included in the spreadsheet found in the Plan’s August 28<sup>th</sup> mailing.

For the reasons stated above, we respectfully submit that the Plan must increase Mr. Spence’s monthly pension benefit by \$23.94.

Sincerely,

John Hotz  
Deputy Director

cc: Mr. James Spence

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<sup>11</sup> The amount of Mr. Spence’s “Holiday Straight Time Pay” during Mr. Spence’s three highest pertinent Plan Years was documented in a letter from Bill Seargent to Mr. Spence dated November 7, 2002. This “additional pay” was also confirmed in a spreadsheet included in the Plan mailing of August 28, 2003, to demonstrate the difference between Mr. Spence’s current pension calculation, and the amount that James would be due if “Holiday Straight Time were included in the calculation.

## **DECLARATION OF BUSTER W. FEARCE, JR.**

I, Buster W. Fearce, Jr. hereby declare:

1. I am making this declaration in support of a request for Plan information and possible appeal of the level of my monthly pension benefits under the MICA Aircraft Industries, Inc. Retirement Plan (the "Plan"). I have personal knowledge of the following and could testify competently to the following if called at trial.

2. In 1995, when ALPHA Corporation took over MICA Aircraft Industries, Inc., all overtime for salaried/exempt employees was renamed "Extended Workweek" (EWW) time. To be paid for such time, an employee would have to receive prior authorization from his or her manager/supervisor.

3. To perform work on any paid holiday that fell on a weekday, such work time had to be approved in advance as EWW time. A supervisor would fill out the request to work on a paid holiday on the same sheet he would use to permit any other EWW time. If approved, the worker would then receive pay above their ordinary week's pay. The time paid for working on a paid holiday limited the amount of EWW that a worker could be paid for that week because it counted toward the 20 hour EWW cap.

4. For example, assume that a paid holiday falls on a Friday, but a worker will be required to work a full shift (8 hours) that day, as well as on Saturday and Sunday. Assume that the worker had worked his regular shift (8 hours) each day, Monday through Thursday, and that the worker received appropriate advance permission to work the holiday and weekend on the proper EWW form. That worker would receive holiday pay for Friday, as well as 8 hours of straight time pay (off of the 20 hour EWW cap), 8 hours of EWW for Saturday, but only 4 hours of EWW pay for Sunday. Despite working a full 8 hours, that worker already hit the 20 hour cap.

5. In a letter I received from Bob F. Hubbins, Director of Human Resources and Administration, dated November 7, 2002, the Plan accurately set forth the pay I received for working on holidays in 1997, 1998 and 2000. Their "Base Salary Pension Reconciliation" forms referred to this amount as "Holiday Straight Time Pay," though I have never heard or seen this term used before.

6. On every holiday reflected in the "Holiday Straight Time" pay explanations in the above letter, I worked a full shift, and had received proper, advance permission to do so.

7. Despite having worked this Extended Workweek time, this time was not included in any of the calculations of my benefit from the Plan.

I declare under penalty of perjury under the laws of the State of Texas that the above is true and correct to the best of my knowledge and if called upon as a witness, I could and would testify competently to the facts stated in this Declaration.

Executed this \_\_\_\_\_ day of September 2003, in \_\_\_\_\_ Texas.

\_\_\_\_\_  
Signature of Buster W. Fearce, Jr.

Notary

## Statutes of Limitations Under ERISA

ERISA contains no express statute of limitations for actions brought under §502(a), except for breach of fiduciary duty actions. Under ERISA §413, a cause of action to redress a breach of fiduciary duty must be commenced as follows:

No action may be commenced under this title with respect to a fiduciary's breach of any responsibility, duty or obligation under this part, or with respect to a violation of this part, after the earlier of

- (1) Six years after (A) the date of the last action which constituted part of the breach or violation, or (B) in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation or;
- (2) Three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

Except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such violation.

No applicable statute of limitation for benefit claims brought under §502(a)(1)(B) and courts apply the most analogous state statute of limitations. Most courts adopt the state statute of limitations that governs written contracts action. A few courts have adopted statute of limitations covering actions for breach of employment contracts or for the recovery of wages.

For benefit claims based on the terms of the plan, the courts have almost uniformly held that the most analogous state statute of limitations is to be applied to test the timeliness of the action.

<b>State</b>	<b>Pension Benefit Rule</b>	<b>Citation</b>
Alabama	6 years, contract action	<u>Hollingshead v. Burford Equip. Co.</u> , 747 F.Supp. 1421 (M.D. Ala. 1990)
Alaska	6 years, contract action	<u>Trustees for Alaska Laborers-Constr. Indus. Health and Sec. Fund v. Ferrell</u> , 812 F.2d 512, 517 (9 <sup>th</sup> Cir. 1987)
Arizona	6 years, written contract action	<u>Elgin v. Great-W. Life Assurance Co.</u> , 786 P.2d (Ariz. Ct. App. 1990)
Arkansas	5 year, written contract action <sup>1</sup> , unless otherwise stipulated in contract and stipulated time is not “unreasonably short” <sup>2</sup> .	1. <u>Bennett v. Federated Mut. Ins. Co.</u> , 141 F.3d 837, 838 (8 <sup>th</sup> Cir. 1998); 2. <u>Ferguson v. Order of United Commercial Travelers of Am.</u> 307 Ark. 425, 821 S.W.2d 30 (1991);
California	4 years, contract action	<u>Schendel v. Pipe Trades Dist. Council No. 36</u> , 880 F.Supp. 710 (N.D. Cal. 1995)
Colorado	6 years, recover payments owed under contract (for unpaid contribution, rather than 3 year period for contracts)	<u>Trustees of Carpenters &amp; Millwrights Health Benefits Trust v. Lillard &amp; Clark Const. Co.</u> , 780 F. Supp. 738 (D. Col. 1990)
Connecticut	6 years, contract action	<u>Brunoli v. Fred Brunoli &amp; Sons, Inc. Pension Plan</u> , 993 F.Supp. 66, 71 (D.Conn.1997)
Delaware	3 years, general statute	<u>Larry Rich v. ZENECA, Inc</u> , 845 F.Supp. 162, 68 (D. Del. 1994)
District of Columbia	3 years, contract action	<u>Estate of Grant U.S News and World</u>

		<u>Report, Inc.</u> , 639 F. Supp. 342, 347048 (D.D.C. 1986)
Florida	2 years, recovery of wages applied to action for recalculation of pension benefits	<u>Gray v. Greyhound Retirement &amp; Disability Trust</u> , 730 F. Supp. 415 (M.D. Fla. 1990)
Georgia	6 year, contract action	<u>Harrison v. Digital Health Plan</u> , 183 F.3d 1235 (11 <sup>th</sup> Cir.(Ga.), 1999)
Hawaii	1 year contract action	<u>Hawaii Carpenters' Trust Funds v. Waiola Carpenter Shop, Inc.</u> , 627 F.Supp. 237, 6 (D.Hawai'i, , 1985)
Idaho	2 years contract action	<u>Bilow v. Preco, Inc.</u> , 132 Idaho 23, 966 P. 2d 23
Illinois	10 years, written contract action	<u>Daill v. Sheet Metal Workers' Local 73 Pension Fund</u> , 100 F.3d 62 (7 <sup>th</sup> Cir. 1996).
Indiana	2 years contract action	<u>Hatcher v. Hauptert</u> , 655 N.E. 2d 1229
Iowa	10 years, breach of written contract (NLRA case under §302)	<u>McCart v. Hartzel</u> , 1978 U.S. Dist. LEXIS 14091; 85 Lab. Cas. (CCH) P10, 959, November 30, 1978
Kansas	5 years, written contract action	<u>Columbian Fin. Corp. v. Businessmen's Assurance Co.</u> , 743 F. Supp. 772 (D. Kan. 1990)
Kentucky	5 year contract action	<u>Whitley v. Mammoth Life and Accident Ins. Co.</u> , 273 S.W. 2d 42
Louisiana	10 years, personal contract actions	<u>Hall v. National Gypsum Co.</u> , 105 F.3d 225 (5 <sup>th</sup> Cir. 1997)
Maine	6 years, contract	<u>Burke v. Hamilton</u>

	action	<u>Beach Division, Scovill Mfg. Co.</u> (1981) Me., 424 A. 2d 145
Maryland	3 years, contract action	<u>Dameron v. Sinai Hosp. Of Baltimore,</u> 815 F.2d 975 (4 <sup>th</sup> Cir. 1987)
Massachusetts	6 years, contract action	<u>Greene v. K-MART Corp. Empls. Retirement Pension Plan,</u> 1986 U.S. Dist. LEXIS 15985
Michigan	6 years, written contract actions (§502(a)(1)(B) claim)	<u>Nolan v. Aetna Life Ins. Co.,</u> 588 F. Supp. 1375 (E.D. Mich. 1984)
Minnesota	2 years, period for claims for wages and fringe benefits	<u>Adamson v. Armco, Inc.</u> 44 F.3d 650 (8 <sup>th</sup> Cir. 1995).
Mississippi	7 years benefits for domestic judgments	<u>Carite v. Carite,</u> 2002 WL 1752833 (Miss. App.)
Missouri	10 years, written contract action	<u>Johnson v. State Mut. Life Assur. Co.,</u> 942 F2d 1260 (8 <sup>th</sup> Cir. 1991)
Montana	5 years contract action	<u>Willison v. Cahoon,</u> 55 P. 3d 419
Nebraska	5 years, breach of contract action	<u>Schroeder v. Phillips Petroleum Co.,</u> 970 F.2d 419 (8 <sup>th</sup> Cir. 1992)
Nevada	6 years contract action	<u>Grayson v. State Farm Mut. Auto Ins.,</u> 971 P. 2d 798
New Hampshire	3 years contract action	<u>Moulton-Garland v. Cableton Sys. Inc.,</u> 143 N.H. 540, 736 A. 2d 1219
New Jersey	6 years, contract action (rather than 2 years under state minimum wage law, for claim for delinquent	<u>Hotel &amp; Restaurant Employees Welfare Fund v. Pub of N.J.,</u> 744 F. Supp. 91 (D.N.J. 1990)

	contributions)	
New Mexico	2 years, contract action	<u>State of New Mexico Public Employees Retirement Association v. Longacre</u> , 131 N.M. 156, 33 P. 3d 906
New York	6 years, contract action	<u>Miles v. New York State Teamsters Conf. Pension and Retirement Fund Employee Pension Benefit Plan</u> , 698 F.2d 593 (2d Cir. 1983)
North Carolina	3 years, contract action	<u>Wise v. Dallas &amp; Mavis Forwarding Co.</u> , 753 F.Supp. 601 (W.D.N.C. 1991)
North Dakota	6 years contract action	<u>Snortland v. State of North Dakota</u> , 615 N.W. 2d 574
Ohio	15 years, contract action	<u>Meade v. Pension Appeals &amp; Review Comm.</u> , 966 F.2d 190 (6 <sup>th</sup> Cir. 1992)
Oklahoma	5 years, written contract action	<u>Wright v. Southwestern Bell Tel. Co.</u> , 925 F.2d 1288 (10 <sup>th</sup> Cir. 1991)
Oregon	10 year statute of limitations	<u>Marriage of Menard and Menard</u> , 180 Or. App. 181, 42 P. 3d 359
Pennsylvania	4 years for not yet payable, anticipatory breach of contract; 3 years for pay status under Pennsylvania Wage Payment and Collection law.	<u>Gluck v. Unisys Corp.</u> , 960 F.2d 1168 (3d Cir. 1992)
Rhode Island	one year from date of abatement or dismissal of action to comply with statute and bring action again	<u>Serpa v. Amaral</u> , 635 A. 2d 1196
South Carolina	6 year period for	<u>Harvey v. S.Carolina</u>

	cause of action arising or occurring before April 5, 1988	<u>Dept. of Corrections</u> , 338 S.C. 500, 527 S.E. 2d 765
South Dakota	6 years, breach of an express or implied contract	<u>Anderson v. John Morrell &amp; Co.</u> , 830 F.2d 872 (8 <sup>th</sup> Cir. 1987)
Tennessee	6 years, contract action	<u>Haynes v. O'Connell</u> , 599 F. Supp. 59 (E.D. Tenn. 1984)
Texas	4 years, breach of contract action	<u>Hogan v. Kraft Foods</u> , 969 F.2d 142 (5 <sup>th</sup> Cir. 1992)
Utah	8 years contract action	<u>Toone v. Toone</u> , 952 P. 2d 112
Vermont	6 years, contract action	<u>Maynard v. City of Burlington</u> , 149 Vt. 40, 537 A. 2d 995
Virginia	3 years of contract action	<u>Brown v. Harms</u> , 251 Va. 301, 467 S.E. 2d. 805
Washington	6 years, contract action	<u>Flanagan v. Inland Empire Electric Workers Pension Plan &amp; Trust</u> , 3 F.3d 1246 (9 <sup>th</sup> Cir. 1993).
West Virginia	10 years, contract action-written any other contract express or implied, 5 years	<u>Adams v. Ireland</u> , 207 W. Va. 1, 528 S.E. 2d 197
Wisconsin	6 years, contract action (before ERISA but concept noted again in subsequent cases. See <u>Sussmann v. Gleisner</u> , 80 Wis. 2d 435 (Wisc. 1977))	<u>Estate of Schroeder v. Gateway Transp. Co.</u> , 53 Wis. 2d 59 (Wisc. 1971)
Wyoming	10 years, written contracts (delinquent contributions)	<u>Trustees of Wyoming Laborers Health and Welfare Plan v. Morgan &amp; Oswood Constr. Co.</u> , 850 F.2d 613 (10 <sup>th</sup> Cir. 1988)

# ERISA in the United States Code

When the Employee Retirement Income Security Act ("ERISA" or "the Act") became law in 1974, it was codified as part of Title 29 of the United States Code. By that time Title 29 already contained the codified version of many other labor laws. (Title 29 section 1 was already "taken," for example.) So the Title 29 section numbers assigned to the provisions of ERISA do not line up with the section numbering in the original Act.

For example, the fiduciary duty provisions of ERISA section 404 are found in Title 29 section 1104. (Unfortunately the mismatch cannot be translated by simply adding 700 to the ERISA section number, though that's true for the fiduciary duty provisions.)

The following table shows the ERISA sections and their corresponding Title 29 section numbers, as Title 29 was contained in the general and permanent laws in effect as of January 3, 2007. Links are to the official U.S. Government online database of the United States Code, published by the Government Printing Office.

## TITLE 29 - LABOR (as of January 5, 1999)

### CHAPTER 18 - EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

#### SUBCHAPTER I - PROTECTION OF EMPLOYEE BENEFIT RIGHTS

##### SUBTITLE A - GENERAL PROVISIONS

- [ERISA 2](#)    [29 USC 1001](#)    **Congressional findings and declaration of policy.**  
(a) Benefit plans as affecting interstate commerce and the Federal taxing power.  
(b) Protection of interstate commerce and beneficiaries by requiring disclosure and reporting, setting standards of conduct, etc., for fiduciaries.  
(c) Protection of interstate commerce, the Federal taxing power, and beneficiaries by vesting of accrued benefits, setting minimum standards of funding, requiring termination insurance.
- [ERISA 3](#)    [29 USC 1001a](#)    **Additional Congressional findings and declaration of policy.**  
(a) Effects of multiemployer pension plans.  
(b) Modification of multiemployer plan termination insurance provisions and replacement of program.  
(c) Policy.
- [Not part of [ERISA](#)]    [29 USC 1001b](#)    **Findings and declaration of policy.**  
(a) Findings.  
(b) Additional findings.  
(c) Declaration of policy.
- [ERISA 3](#)    [29 USC 1002](#)    **Definitions.**

[ERISA 4](#) [29 USC 1003](#) Coverage.

## SUBTITLE B - REGULATORY PROVISIONS

### PART 1 - REPORTING AND DISCLOSURE

[ERISA 101](#) [29 USC 1021](#) **Duty of disclosure and reporting.**

- (a) Summary plan description and information to be furnished to participants and beneficiaries.
- (b) Reports to be filed with Secretary of Labor.
- (c) Terminal and supplementary reports.
- (d) Notice of failure to meet minimum funding standards.
- (e) Notice of transfer of excess pension assets to health benefits accounts.
- (f) Defined benefit plan funding notices.
- (g) Reporting by certain arrangements.
- (h) Simple retirement accounts.
- (i) Notice of blackout periods to participant or beneficiary under individual account plan.
- (j) Notice of funding-based limitation on certain forms of distribution.
- (k) Multiemployer plan information made available on request.
- (l) Notice of potential withdrawal liability.
- (m) Notice of right to divest.
- (n) Cross references.

[ERISA 102](#) [29 USC 1022](#) **Summary plan description.**

[ERISA 103](#) [29 USC 1023](#) **Annual reports.**

- (a) Publication and filing.
- (b) Financial statement.
- (c) Information to be furnished by administrator.
- (d) Actuarial statement.
- (e) Statement from insurance company, insurance service, or other similar organizations which sell or guarantee plan benefits.
- (f) Additional information with respect to defined benefit plans.

[ERISA 104](#) [29 USC 1024](#) **Filing and furnishing of information.**

- (a) Filing of annual report, plan description, summary plan description, and modifications and changes with Secretary.
- (b) Publication of summary plan description and annual report to participants and beneficiaries of plan.
- (c) Statement of rights.
- (d) Furnishing summary plan information to employers and employee representatives of multiemployer plans.
- (e) Cross references.

**ERISA 105 29 USC 1025 Reporting of participant's benefit rights.**  
(a) Requirements to provide pension benefit statements.  
(b) Limitation on number of statements.  
(c) Individual statement furnished by administrator to participants setting forth information in administrator's Internal Revenue registration statement and notification of forfeitable benefits.  
(d) Repealed. Pub. L. 109-280, Title V, § 508(a)(2)(A), Aug. 17, 2006, 120 Stat. 951

**ERISA 106 29 USC 1026 Reports made public information.**

**ERISA 107 29 USC 1027 Retention of records.**

**ERISA 108 29 USC 1028 Reliance on administrative interpretations.**

**ERISA 109 29 USC 1029 Forms.**

- (a) Information required on forms.
- (b) Information not required on forms.
- (c) Format and content of summary plan description, annual report, etc., required to be furnished to plan participants and beneficiaries.

**ERISA 110 29 USC 1030 Alternative methods of compliance.**

**ERISA 111 29 USC 1031 Repeal and effective date.**

## PART 2 - PARTICIPATION AND VESTING

**ERISA 201 29 USC 1051 Coverage.**

**ERISA 202 29 USC 1052 Minimum participation standards.**

**ERISA 203 29 USC 1053 Minimum vesting standards.**

- (a) Nonforfeitability requirements.
- (b) Computation of period of service.
- (c) Plan amendments altering vesting schedule.
- (d) Nonforfeitable benefits after lesser period and in greater amounts than required.
- (e) Consent for distribution; present value; covered distributions.
- (f) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts.

**ERISA 204 29 USC 1054 Benefit accrual requirements.**

- (a) Satisfaction of requirements by pension plans.
- (b) Enumeration of plan requirements.
- (c) Employee's accrued benefits derived from employer and employee contributions.
- (d) Employee service which may be disregarded in determining employee's accrued benefits under plan.
- (e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service.
- (f) Employer treated as maintaining a plan.

- (g) Decrease of accrued benefits through amendment of plan.
- (h) Notice of significant reduction in benefit accruals.
- (i) Prohibition on benefit increases where plan sponsor is in bankruptcy.
- (j) Diversification requirements for certain individual account plans.
- (k) Cross reference.

**[ERISA 205](#) [29 USC 1055](#) **Requirement of joint and survivor annuity and preretirement survivor annuity.****

- (a) Required contents for applicable plans.
- (b) Applicable plans.
- (c) Plans meeting requirements of section.
- (d) "Qualified joint and survivor annuity" defined.
- (e) "Qualified preretirement survivor annuity" defined.
- (f) Marriage requirements for plan.
- (g) Distribution of present value of annuity; written consent; determination of present value.
- (h) Definitions.
- (i) Increased costs from providing annuity.
- (j) Use of participant's accrued benefit as security for loan as not preventing distribution.
- (k) Spousal consent.
- (l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor.

**[ERISA 206](#) [29 USC 1056](#) **Form and payment of benefits.****

- (a) Commencement date for payment of benefits.
- (b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937.
- (c) Forfeiture of accrued benefits derived from employer contributions.
- (d) Assignment or alienation of plan benefits.
- (e) Limitation on distributions other than life annuities paid by plan.
- (f) Missing participants in terminated plans.
- (g) Funding-based limits on benefits and benefit accruals under single-employer plans.

**[ERISA 207](#) [29 USC 1057](#) **Repealed. Pub. L. 109-280, Title I, § 107(d), Aug. 17, 2006, 120 Stat. 820.****

**[ERISA 208](#) [29 USC 1058](#) **Mergers and consolidations of plans or transfers of plan assets.****

**[ERISA 209](#) [29 USC 1059](#) **Recordkeeping and reporting requirements.****

**[ERISA 210](#) [29 USC 1060](#) **Multiple employer plans and other special rules.****

- (a) Plan maintained by more than one employer.
- (b) Maintenance of plan of predecessor employer.
- (c) Plan maintained by controlled group of corporations.
- (d) Plan of trades or businesses under common control.
- (e) Special rules for eligible combined defined benefit plans and

qualified cash or deferred arrangements.

[ERISA 211](#) [29 USC 1061](#) **Effective dates.**

### **PART 3 - FUNDING**

[ERISA 301](#) [29 USC 1081](#) **Coverage.**

- (a) Plans excepted from applicability of this part.
- (b) "Insurance contract plan" defined.
- (c) Applicability of this part to terminated multiemployer plans.
- (d) Repealed. Pub. L. 109-280, Title II, § 201(c)(1), Aug. 17, 2006, 120 Stat. 868.

[ERISA 302](#) [29 USC 1082](#) **Minimum funding standards.**

- (a) Requirement to meet minimum funding standard.
- (b) Liability for contributions.
- (c) Variance from minimum funding standards.
- (d) Miscellaneous rules.

[ERISA 303](#) [29 USC 1083](#) **Minimum funding standards for single-employer defined benefit pension plans.**

- (a) Minimum required contribution.
- (b) Target normal cost.
- (c) Shortfall amortization charge.
- (d) Rules relating to funding target.
- (e) Waiver amortization charge.
- (f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance.
- (g) Valuation of plan assets and liabilities.
- (h) Actuarial assumptions and methods.
- (i) Special rules for at-risk plans.
- (j) Payment of minimum required contributions.
- (k) Imposition of lien where failure to make required contributions.
- (l) Qualified transfers to health benefit accounts.

[ERISA 304](#) [29 USC 1084](#) **Minimum funding standards for multiemployer plans.**

- (a) In general.
- (b) Funding standard account.
- (c) Additional rules.
- (d) Extension of amortization periods for multiemployer plan.

[ERISA 305](#) [29 USC 1085](#) **Additional funding rules for multiemployer plans in endangered status or critical status.**

- (a) General rule.
- (b) Determination of endangered and critical status.
- (c) Funding improvement plan must be adopted for multiemployer plans in endangered status.
- (d) Rules for operation of plan during adoption and improvement periods.

- (e) Rehabilitation plan must be adopted for multiemployer plans in critical status.
- (f) Rules for operation of plan during adoption and rehabilitation period.
- (g) Expedited resolution of plan sponsor decisions.
- (h) Nonbargained participation.
- (i) Definitions; actuarial method.

**[ERISA 306](#) [29 USC 1085a](#) Repealed. Pub. L. 109-280, Title I, § 101(a), Aug. 17, 2006, 120 Stat. 784.**

**[ERISA 307](#) [29 USC 1085b](#) Repealed. Pub. L. 109-280, Title I, § 101(a), Aug. 17, 2006, 120 Stat. 784.**

**[ERISA 308](#) [29 USC 1086](#) Repealed. Pub. L. 109-280, Title I, § 101(a), Aug. 17, 2006, 120 Stat. 784.**

#### **PART 4 - FIDUCIARY RESPONSIBILITY**

**[ERISA 401](#) [29 USC 1101](#) Coverage.**

- (a) Scope of coverage.
- (b) Securities or policies deemed to be included in plan assets.
- (c) Clarification of application of ERISA to insurance company general accounts.

**[ERISA 402](#) [29 USC 1102](#) Establishment of plan.**

- (a) Named fiduciaries.
- (b) Requisite features of plan.
- (c) Optional features of plan.

**[ERISA 403](#) [29 USC 1103](#) Establishment of trust.**

- (a) Benefit plan assets to be held in trust; authority of trustees.
- (b) Exceptions.
- (c) Assets of plan not to inure to benefit of employer; allowable purposes of holding plan assets.
- (d) Termination of plan.

**[ERISA 404](#) [29 USC 1104](#) Fiduciary duties.**

- (a) Prudent man standard of care.
- (b) Indicia of ownership of assets outside jurisdiction of district courts.
- (c) Control over assets by participant or beneficiary.
- (d) Plan terminations.

**[ERISA 405](#) [29 USC 1105](#) Liability for breach of co-fiduciary.**

- (a) Circumstances giving rise to liability.
- (b) Assets held by two or more trustees.
- (c) Allocation of fiduciary responsibility; designated persons to carry out fiduciary responsibilities.
- (d) Investment managers.

**ERISA 406 29 USC 1106 Prohibited transactions.**

- (a) Transactions between plan and party in interest.
- (b) Transactions between plan and fiduciary.
- (c) Transfer of real or personal property to plan by party in interest.

**ERISA 407 29 USC 1107 Limitation with respect to acquisition and holding of employer securities and employer real property by certain plans.**

- (a) Percentage limitation.
- (b) Exception.
- (c) Election.
- (d) Definitions.
- (e) Marketable obligations.
- (f) Maximum percentage of stock held by plan; time of holding or acquisition; necessity of legally binding contract.

**ERISA 408 29 USC 1108 Exemptions from prohibited transactions.**

- (a) Grant of exemptions.
- (b) Enumeration of transactions exempted from section 1106 prohibitions.
- (c) Fiduciary benefits and compensation not prohibited by section 1106.
- (d) Owner-employees; family members; shareholder employees.
- (e) Acquisition or sale by plan of qualifying employer securities; acquisition, sale, or lease by plan of qualifying employer real property.
- (f) Applicability of statutory prohibitions to mergers or transfers.
- (g) Provision of investment advice to participant and beneficiaries.

**ERISA 409 29 USC 1109 Liability for breach of fiduciary duty.**

**ERISA 410 29 USC 1110 Exculpatory provisions; insurance.**

**ERISA 411 29 USC 1111 Persons prohibited from holding certain positions.**

- (a) Conviction or imprisonment.
- (b) Penalty.
- (c) Definitions.
- (d) Salary of person barred from employee benefit plan office during appeal of conviction.

**ERISA 412 29 USC 1112 Bonding.**

- (a) Requisite bonding of plan officials.
- (b) Unlawful acts.
- (c) Conflict of interest prohibited in procuring bonds.
- (d) Exclusiveness of statutory basis for bonding requirement for persons handling funds or other property of employee benefit plans.
- (e) Regulations.

**ERISA 413 29 USC 1113 Limitation of actions.**

**ERISA 414 29 USC 1114 Effective date.**

## PART 5 - ADMINISTRATION AND ENFORCEMENT

- [ERISA 501](#)     [29 USC 1131](#)     **Criminal penalties.**
- [ERISA 502](#)     [29 USC 1132](#)     **Civil enforcement.**
- (a) Persons empowered to bring a civil action.
  - (b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions.
  - (c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form.
  - (d) Status of employee benefit plan as entity.
  - (e) Jurisdiction.
  - (f) Amount in controversy; citizenship of parties.
  - (g) Attorney's fees and costs; awards in actions involving delinquent contributions.
  - (h) Service upon Secretary of Labor and Secretary of the Treasury.
  - (i) Administrative assessment of civil penalty.
  - (j) Direction and control of litigation by Attorney General.
  - (k) Jurisdiction of actions against the Secretary of Labor.
  - (l) Civil penalties on violations by fiduciaries.
  - (m) Penalty for improper distribution.
- [ERISA 503](#)     [29 USC 1133](#)     **Claims procedure.**
- [ERISA 504](#)     [29 USC 1134](#)     **Investigative authority.**
- (a) Investigation and submission of reports, books, etc.
  - (b) Frequency of submission of books and records.
  - (c) Other provisions applicable relating to attendance of witnesses and production of books, records, etc.
- [ERISA 505](#)     [29 USC 1135](#)     **Regulations.**
- [ERISA 506](#)     [29 USC 1136](#)     **Coordination and responsibility of agencies enforcing this subchapter and related Federal laws.**
- (a) Coordination with other agencies and departments.
  - (b) Responsibility for detecting and investigating civil and criminal violations of this subchapter and related Federal laws.
  - (c) Coordination of enforcement with States with respect to certain arrangements.
- [ERISA 507](#)     [29 USC 1137](#)     **Administration.**
- [ERISA 508](#)     [29 USC 1138](#)     **Appropriations.**
- [ERISA 509](#)     [29 USC 1139](#)     **Separability.**
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- [ERISA 511](#)     [29 USC 1141](#)     **Coercive interference.**
- [ERISA 512](#)     [29 USC 1142](#)     **Advisory Council on Employee Welfare and Pension Benefit Plans.**

- (a) Establishment; membership; terms; appointment and reappointment; vacancies; quorum.
- (b) Duties and functions.
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- (d) Compensation.
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- (a) Authorization to undertake research and surveys.
- (b) Omitted.
- (c) Cooperation with Congress.

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- (1) In general.
- (2) Access to books, documents, etc.
- (3) Definitions.
- (4) Effective date.

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- (a) Supersedure; effective date.
- (b) Construction and application.
- (c) Definitions.
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**ERISA 515      29 USC 1145      **Delinquent contributions.****

**ERISA 516      29 USC 1146      **Outreach to promote retirement income savings.****

- (a) In general.
- (b) Methods.
- (c) Information to be made available.
- (d) Establishment of site on Internet.
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- (b) Planning and direction.
- (c) Purpose of National Summit.
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- (i) Authorization of appropriations.
- (j) Financial obligation for fiscal year 1998.
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## GROUP HEALTH PLANS

**ERISA 601 29 USC 1161 Plans must provide continuation coverage to certain individuals.**

- (a) In general.
- (b) Exception for certain plans.

**ERISA 602 29 USC 1162 Continuation coverage.**

- (1) Type of benefit coverage.
- (2) Period of coverage.
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**ERISA 605 29 USC 1165 Election**

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- (b) Alternative means of compliance with requirements for notification of multiemployer plans by employers.
- (c) Rules relating to notification of qualified beneficiaries by plan administrator.

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- (1) Group health plan.
- (2) Covered employee.
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**ERISA 609 29 USC 1169 Additional standards for group health plans.**

- (a) Group health plan coverage pursuant to medical child support orders.
- (b) Rights of States with respect to group health plans where participants or beneficiaries thereunder are eligible for medicaid benefits.
- (c) Group health plan coverage of dependent children in cases of adoption.
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**ERISA 701 29 USC 1181 Increased portability through limitation on preexisting condition exclusions.**

- (a) Limitation on preexisting condition exclusion period; crediting for periods of previous coverage.
- (b) Definitions.
- (c) Rules relating to crediting previous coverage.
- (d) Exceptions.
- (e) Certifications and disclosure of coverage.
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**ERISA 702 29 USC 1182 Prohibiting discrimination against individual participants and beneficiaries based on health status.**

- (a) In eligibility to enroll.
- (b) In premium contributions.

**ERISA 703 29 USC 1183 Guaranteed renewability in multiemployer plans and multiple employer welfare arrangements.**

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**ERISA 711 29 USC 1185 Standards relating to benefits for mothers and newborns.**

- (a) Requirements for minimum hospital stay following birth.
- (b) Prohibitions.
- (c) Rules of construction.
- (d) Notice under group health plan.
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- (f) Preemption; exception for health insurance coverage in certain States.

**ERISA 712 29 USC 1185a Parity in application of certain limits to mental health benefits.**

- (a) In general.
- (b) Construction.
- (c) Exemptions.
- (d) Separate application to each option offered.
- (e) Definitions.
- (f) Sunset.

**ERISA 713 29 USC 1185b Required coverage for reconstructive surgery following mastectomies.**

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- (b) Notice.
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- (a) General exception for certain small group health plans.
  - (b) Exception for certain benefits.
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- ERISA 733 29 USC 1191b **Definitions.****
- (a) Group health plan.
  - (b) Definitions relating to health insurance.
  - (c) Excepted benefits.
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## SUBCHAPTER II - JURISDICTION, ADMINISTRATION, ENFORCEMENT; JOINT PENSION TASK FORCE, ETC.

### SUBTITLE A - JURISDICTION, ADMINISTRATION, AND ENFORCEMENT

- ERISA 3001 29 USC 1201 **Procedures in connection with the issuance of certain determination letters by the Secretary of the Treasury covering qualifications under Internal Revenue Code.****
- (a) Additional material required of applicants.
  - (b) Opportunity to comment on application.
  - (c) Intervention by Pension Benefit Guaranty Corporation or Secretary of Labor into declaratory judgment action under section 7476 of title 26, action by Corporation authorized.
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- ERISA 3002 29 USC 1202 **Procedures with respect to continued compliance with Internal****

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(d) Opportunity afforded Secretary of the Treasury to intervene in cases involving construction or application of minimum standards; review of briefs filed by Pension Benefit Guaranty Corporation or Secretary of Labor.

(e) Consultative requirements respecting promulgation of proposed or final regulations.

**[ERISA 3003](#) [29 USC 1203](#) **Procedures in connection with prohibited transactions.****

(a) Notification to Secretary of Labor; opportunity to comment on imposition of tax under section 4975 of title 26; waiver; requests for investigations.

(b) Consultation.

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- (a) Establishment within Department of Labor.
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- (e) Civil actions by corporation; jurisdiction; process; expeditious handling of case; costs; limitation on actions.
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- (a) Establishment of four revolving funds on books of Treasury of the United States.
- (b) Credits to funds; availability of funds; investment of moneys in excess of current needs.
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- (d) Establishment of fifth fund; purpose, availability, etc.
- (e) Establishment of sixth fund; purpose, availability, etc.
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- (a) Schedules for premium rates and bases for application; establishment, coverage, etc.
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- (a) Premiums payable when due; accrual; waiver or reduction.
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- (c) Civil action to recover premium penalty and interest.
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- (a) Information required.
- (b) Persons required to provide information.
- (c) Information exempt from disclosure requirements.
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**ERISA 4011**    **29 USC 1311**

**Repealed. Pub. L. 109-280, Title V, § 501(b), Aug. 17, 2006, 120 Stat. 939.**

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- (a) Plans covered.
- (b) Plans not covered.
- (c) Definitions.

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- (a) Nonforfeitable benefits.
- (b) Exceptions.
- (c) Payment by corporation to participants and beneficiaries of recovery percentage of outstanding amount of benefit liabilities.
- (d) Authorization to guarantee other classes of benefits.
- (e) Nonforfeitability of preretirement survivor annuity.
- (f) Effective date of plan amendments.
- (g) Bankruptcy filing substituted for termination date.

(h) Special rule for plans electing certain funding requirements.

**ERISA 4022A 29 USC 1322a **Multiemployer plan benefits guaranteed.****

- (a) Benefits of covered plans subject to guarantee.
- (b) Benefits or benefit increases not eligible for guarantee.
- (c) Determinations respecting amount of guarantee.
- (d) Amount of guarantee of reduced benefit.
- (e) Ineligibility of benefits for guarantee.
- (f) Study, report, etc., respecting premium increase in existing basic-benefit guarantee levels; Congressional procedures applicable for revision of schedules.
- (g) Guarantee of payment of other classes of benefits and establishment of terms and conditions of guarantee; promulgation of regulations for establishment of supplemental program to guarantee benefits otherwise ineligible; status of benefits; applicability of revised schedule of premiums.
- (h) Applicability to nonforfeitable benefits accrued as of July 30, 1980; manner and extent of guarantee.

**ERISA 4022B 29 USC 1322b **Aggregate limit on benefits guaranteed; criteria applicable.****

**ERISA 4023 29 USC 1323 **Plan fiduciaries.****

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**ERISA 4041 29 USC 1341 **Termination of single-employer plans.****

- (a) General rules governing single-employer plan terminations.
- (b) Standard termination of single-employer plans.
- (c) Distress termination of single-employer plans.
- (d) Sufficiency.
- (e) Limitation on the conversion of a defined benefit plan to a defined contribution plan.

**ERISA 4041A 29 USC 1341a **Termination of multiemployer plans.****

- (a) Determinative factors.
- (b) Date of termination.
- (c) Duties of plan sponsor of amended plan.
- (d) Duties of plan sponsor of nonoperative plan.
- (e) Amount of contribution of employer under amended plan for each plan year subsequent to plan termination date.
- (f) Payment of benefits; reporting requirements for terminated plans and rules and standards for administration of such plans.

**ERISA 4042 29 USC 1342 **Institution of termination proceedings by the corporation.****

- (a) Authority to institute proceedings to terminate a plan.
- (b) Appointment of trustee.
- (c) Adjudication that plan must be terminated.
- (d) Powers of trustee.
- (e) Filing of application notwithstanding pendency of other

proceedings.

(f) Exclusive jurisdiction; stay of other proceedings.

(g) Venue.

(h) Compensation of trustee and professional service personnel appointed or retained by trustee.

**ERISA 4043 29 USC 1343 Reportable events.**

(a) Notification that event has occurred.

(b) Notification that event is about to occur.

(c) Enumeration of reportable events.

(d) Notification to corporation by Secretary of the Treasury.

(e) Notification to corporation by Secretary of Labor.

(f) Disclosure exemption.

**ERISA 4044 29 USC 1344 Allocation of assets.**

(a) Order of priority of participants and beneficiaries.

(b) Adjustment of allocations; reallocations; mandatory contributions; establishment of subclasses and categories.

(c) Increase or decrease in value of assets.

(d) Distribution of residual assets; restrictions on reversions pursuant to recently amended plans; assets attributable to employee contributions; calculation of remaining assets.

**ERISA 4045 29 USC 1345 Recapture of payments.**

(a) Authorization to recover benefits.

(b) Recoverable amount.

(c) Payments made on or after death or disability of participant; waiver of recovery in case of hardship.

**ERISA 4046 29 USC 1346 Reports to trustee.**

**ERISA 4047 29 USC 1347 Restoration of plans.**

**ERISA 4048 29 USC 1348 Termination date.**

**ERISA 4049 29 USC 1349 Repealed.**

**ERISA 4050 29 USC 1350 Missing participants.**

(a) General rule.

(b) Definitions.

(c) Multiemployer plans.

(d) Plans not otherwise subject to this subchapter.

(e) Regulatory authority.

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**ERISA 4061 29 USC 1361 Amounts payable by corporation.**

**ERISA 4062 29 USC 1362 Liability for termination of single-employer plans under a distress termination or a termination by corporation.**

(a) In general.

- (b) Liability to corporation.
- (c) Liability to section 1342 trustee.
- (d) Definitions.
- (e) Treatment of substantial cessation of operations.

**[ERISA 4063](#) [29 USC 1363](#) **Liability of substantial employer for withdrawal from single-employer plans under multiple controlled groups.****

- (a) Single-employer plans with two or more contributing sponsors.
- (b) Computation of liability.
- (c) Bond in lieu of payment of liability; 5-year termination period.
- (d) Alternate appropriate procedure.
- (e) Indemnity agreement.

**[ERISA 4064](#) [29 USC 1364](#) **Liability on termination of single-employer plans under multiple controlled groups.****

**[ERISA 4065](#) [29 USC 1365](#) **Annual report of plan administrator.****

**[ERISA 4066](#) [29 USC 1366](#) **Annual notification to substantial employers.****

**[ERISA 4067](#) [29 USC 1367](#) **Recovery of liability for plan termination.****

**[ERISA 4068](#) [29 USC 1368](#) **Lien for liability.****

- (a) Creation of lien.
- (b) Term of lien.
- (c) Priority.
- (d) Civil action; limitation period.
- (e) Release or subordination.
- (f) Definitions.

**[ERISA 4069](#) [29 USC 1369](#) **Treatment of transactions to evade liability; effect of corporate reorganization.****

- (a) Treatment of transactions to evade liability.
- (b) Effect of corporate reorganization.

**[ERISA 4070](#) [29 USC 1370](#) **Enforcement authority relating to terminations of single-employer plans.****

- (a) In general.
- (b) Status of plan as party to action and with respect to legal process.
- (c) Jurisdiction and venue.
- (d) Right of corporation to intervene.
- (e) Awards of costs and expenses.
- (f) Limitation on actions.

**[ERISA 4071](#) [29 USC 1371](#) **Penalty for failure to timely provide required information.****

**SUBTITLE E - SPECIAL PROVISIONS FOR MULTIEmployer PLANS  
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**[ERISA 4201](#) [29 USC 1381](#) **Withdrawal liability established; criteria and definitions.****

**ERISA 4202 29 USC 1382 Determination and collection of liability; notification of employer.**

**ERISA 4203 29 USC 1383 Complete withdrawal.**

- (a) Determinative factors.
- (b) Building and construction industry.
- (c) Entertainment industry.
- (d) Other determinative factors.
- (e) Date of complete withdrawal.
- (f) Special liability withdrawal rules for industries other than construction and entertainment industries; procedures applicable to amend plans.

**ERISA 4204 29 USC 1384 Sale of assets.**

- (a) Complete or partial withdrawal not occurring as a result of sale and subsequent cessation of covered operations or cessation of obligation to contribute to covered operations; continuation of liability of seller.
- (b) Liability of purchaser.
- (c) Variances or exemptions from continuation of liability of seller; procedures applicable.
- (d) "Unrelated party" defined.

**ERISA 4205 29 USC 1385 Partial withdrawals.**

- (a) Determinative factors.
- (b) Criteria applicable.
- (c) Retail food industry.
- (d) Continuation of liability of employer for partial withdrawal under amended plan.

**ERISA 4206 29 USC 1386 Adjustment for partial withdrawal; determination of amount; reduction for partial withdrawal liability; procedures applicable.**

**ERISA 4207 29 USC 1387 Reduction or waiver of complete withdrawal liability; procedures and standards applicable.**

**ERISA 4208 29 USC 1388 Reduction of partial withdrawal liability.**

- (a) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year following the partial withdrawal year; criteria applicable; furnishing of bond in lieu of payment of partial withdrawal liability.
- (b) Obligation of employer for payments for partial withdrawal for plan years beginning after the second consecutive plan year; other criteria applicable.
- (c) Pro rata reduction of amount of partial withdrawal liability payment of employer for plan year following partial withdrawal year.
- (d) Building and construction industry; entertainment industry.
- (e) Reduction or elimination of partial withdrawal liability under

any conditions; criteria; procedures applicable.

**ERISA 4209 29 USC 1389 **De minimis rule.****

- (a) Reduction of unfunded vested benefits allocable to employer withdrawn from plan.
- (b) Amendment of plan for reduction of amount of unfunded vested benefits allocable to employer withdrawn from plan.
- (c) Nonapplicability.
- (d) Presumption of employer withdrawal from plan pursuant to agreement or arrangement applicable in action or proceeding to determine or collect withdrawal liability.

**ERISA 4210 29 USC 1390 **Nonapplicability of withdrawal liability for certain temporary contribution obligation periods; exception.****

**ERISA 4211 29 USC 1391 **Methods for computing withdrawal liability.****

- (a) Determination of amount of unfunded vested benefits allocable to employer withdrawn from plan.
- (b) Factors determining computation of amount of unfunded vested benefits allocable to employer withdrawn from plan.
- (c) Amendment of multiemployer plan for determination respecting amount of unfunded vested benefits allocable to employer withdrawn from plan; factors determining computation of amount.
- (d) Method of calculating allocable share of employer of unfunded vested benefits set forth in subsection (c)(3) of this section; applicability of certain statutory provisions.
- (e) Reduction of liability of withdrawn employer in case of transfer of liabilities to another plan incident to withdrawal or partial withdrawal of employer.
- (f) Computations applicable in case of withdrawal following merger of multiemployer plans.

**ERISA 4212 29 USC 1392 **Obligation to contribute.****

- (a) "Obligation to contribute" defined.
- (b) Payments of withdrawal liability not considered contributions.
- (c) Transactions to evade or avoid liability.

**ERISA 4213 29 USC 1393 **Actuarial assumptions.****

- (a) Use by plan actuary in determining unfunded vested benefits of a plan for computing withdrawal liability of employer.
- (b) Factors determinative of unfunded vested benefits of plan for computing withdrawal liability of employer.
- (c) Determination of amount of unfunded vested benefits.

**ERISA 4214 29 USC 1394 **Application of plan amendments; exception.****

**ERISA 4215 29 USC 1395 **Plan notification to corporation of potentially significant withdrawals.****

**ERISA 4216 29 USC 1396 **Special rules for plans under section 404(c) of title 26.****

- (a) Amount of withdrawal liability; determinative factors.

- (b) Covered plans.
- (c) Amount of liability of employer; "a year of signatory service" defined.

**[ERISA 4217](#) [29 USC 1397](#) **Application of part in case of certain pre-1980 withdrawals; adjustment of covered plan.****

**[ERISA 4218](#) [29 USC 1398](#) **Withdrawal not to occur because of change in business form or suspension of contributions during labor dispute.****

**[ERISA 4219](#) [29 USC 1399](#) **Notice, collection, etc., of withdrawal liability.****

- (a) Furnishing of information by employer to plan sponsor.
- (b) Notification, demand for payment, and review upon complete or partial withdrawal by employer.
- (c) Payment requirements; amount, etc.
- (d) Applicability of statutory prohibitions.

**[ERISA 4220](#) [29 USC 1400](#) **Approval of amendments.****

- (a) Amendment of covered multiemployer plan; procedures applicable.
- (b) Amendment respecting methods for computing withdrawal liability.
- (c) Criteria for disapproval by corporation.

**[ERISA 4221](#) [29 USC 1401](#) **Resolution of disputes.****

- (a) Arbitration proceedings; matters subject to arbitration, procedures applicable, etc.
- (b) Alternative collection proceedings; civil action subsequent to arbitration award; conduct of arbitration proceedings.
- (c) Presumption respecting finding of fact by arbitrator.
- (d) Payments by employer prior and subsequent to determination by arbitrator; adjustments; failure of employer to make payments.
- (e) Furnishing of information by plan sponsor to employer respecting computation of withdrawal liability of employer; fees.
- (f) Procedures applicable to certain disputes.

**[ERISA 4222](#) [29 USC 1402](#) **Reimbursements for uncollectible withdrawal liability.****

- (a) Required supplemental program to reimburse for payments due from employers uncollectible as a result of employer involvement in bankruptcy case or proceedings; program participation, premiums, etc.
- (b) Discretionary supplemental program to reimburse for payments due from employers uncollectible for other appropriate reasons.
- (c) Payment of cost of program.
- (d) Terms and conditions, limitations, etc., of supplemental program.
- (e) Arrangements by corporation with private insurers for implementation of program; election of coverage by participating plans with private insurers.

**ERISA 4223 29 USC 1403 **Withdrawal liability payment fund.****

- (a) Establishment of or participation in fund by plan sponsors.
- (b) Definitions.
- (c) Payments to plan; amount, criteria, etc.
- (d) Application of payments by plan.
- (e) Subrogation of fund to rights of plan.
- (f) Discharge of rights of fiduciary of fund; standards applicable, etc.
- (g) Prohibition on payments from fund to plan where certain labor negotiations involve employer withdrawn or partially withdrawn from plan and continuity of labor organization representing employees continues.
- (h) Purchase of insurance by employer.
- (i) Promulgation of regulations for establishment and maintenance of fund.

**ERISA 4224 29 USC 1404 **Alternative method of withdrawal liability payments.****

**ERISA 4225 29 USC 1405 **Limitation on withdrawal liability.****

- (a) Unfunded vested benefits allocable to employer in bona fide sale of assets of employer in arms-length transaction to unrelated party; maximum amount; determinative factors.
- (b) Unfunded vested benefits allocable to insolvent employer undergoing liquidation or dissolution; maximum amount; determinative factors.
- (c) Property not subject to enforcement of liability; precondition.
- (d) Insolvency of employer; liquidation or dissolution value of employer.
- (e) One or more withdrawals of employer attributable to same sale, liquidation, or dissolution.

**PART 2 - MERGER OR TRANSFER OF PLAN ASSETS OR LIABILITIES**

**ERISA 4231 29 USC 1411 **Mergers and transfers between multiemployer plans.****

- (a) Authority of plan sponsor.
- (b) Criteria.
- (c) Actions not deemed violation of section 1106(a) or (b)(2) of this title.
- (d) Nature of plan to which liabilities are transferred.

**ERISA 4232 29 USC 1412 **Transfers between a multiemployer plan and a single-employer plan.****

- (a) General authority.
- (b) Accrued benefit of participant or beneficiary not lower immediately after effective date of transfer or merger.
- (c) Liability of multiemployer plan to corporation where single-employer plan terminates within 60 months after effective date of transfer; amount of liability, exemption, etc.

- (d) Guarantee of benefits under single-employer plan.
- (e) Transfer of liabilities by multiemployer plan to single-employer plan.
- (f) Additional requirements by corporation for protection of interests of plan participants, beneficiaries and corporation; approval by corporation of transfer of assets or liabilities to single-employer plan from plan in reorganization; covered transfers in connection with termination.

**ERISA 4233 29 USC 1413 Partition.**

- (a) Authority of corporation.
- (b) Authority of plan sponsor upon application to corporation for partition order; procedures applicable to corporation.
- (c) Authority of corporation notwithstanding pendency of partition proceeding.
- (d) Scope of partition order.
- (e) Nature of plan created by partition.
- (f) Authority of corporation to obtain decree partitioning plan and appointing trustee for terminated portion of partitioned plan.

**ERISA 4234 29 USC 1414 Asset transfer rules.**

- (a) Applicability and scope.
- (b) Exemption of de minimis transfers.
- (c) Written reciprocity agreements.

**ERISA 4235 29 USC 1415 Transfers pursuant to change in bargaining representative.**

- (a) Authority to transfer from old plan to new plan pursuant to employee participation in another multiemployer plan after certified change of representative.
- (b) Notification by employer of plan sponsor of old plan; notification by plan sponsor of old plan of employer and plan sponsor of new plan; appeal by new plan to prevent transfer; further proceedings.
- (c) Reduction of amount of withdrawal liability of employer upon transfer of appropriate amount of assets and liabilities by plan sponsor of old plan to new plan.
- (d) Escrow payments by employer upon complete or partial withdrawal and prior to transfer.
- (e) Prohibition on transfer of assets to new plan by plan sponsor of old plan; exemptions.
- (f) Agreement between plan sponsors of old plan and new plan to transfer in compliance with other statutory provisions; reduction of withdrawal liability of employer from old plan; amount of withdrawal liability of employer to new plan.
- (g) Definitions.

**PART 3 - REORGANIZATION; MINIMUM CONTRIBUTION REQUIREMENT FOR**

## MULTIEMPLOYER PLANS

- ERISA 4241 29 USC 1421 Reorganization status.**
- (a) Reorganization index of plan for plan year greater than zero.
  - (b) Determination of reorganization index of plan for plan year; applicable factors, definitions, etc.
  - (c) Payment of benefits to participants.
  - (d) Terminated multiemployer plans.
- ERISA 4242 29 USC 1422 Notice of reorganization and funding requirements.**
- ERISA 4243 29 USC 1423 Minimum contribution requirement.**
- (a) Maintenance of funding standard account; amount of accumulated funding deficiency.
  - (b) Determination of amount; applicable factors.
  - (c) Current contribution base; valuation contribution base.
  - (d) Maximum amount; amount of funding standard requirement; applicability to plan amendments increasing benefits.
  - (e) Adjustment of vested benefits charge.
  - (f) Waiver of accumulated funding deficiency.
  - (g) Statutory methods applicable for determinations.
- ERISA 4244 29 USC 1424 Overburden credit against minimum contribution requirement.**
- (a) Applicability of overburden credit to determinations.
  - (b) Determination of overburden status of plan.
  - (c) Amount of overburden credit.
  - (d) Amount of overburden factor.
  - (e) Definitions; determinative factors.
  - (f) Eligibility of plan for overburden credit for plan year.
  - (g) Overburden credit where 2 or more multiemployer plans merge.
- ERISA 4244A 29 USC 1425 Adjustments in accrued benefits.**
- (a) Amendment of multiemployer plan in reorganization to reduce or eliminate accrued benefits attributable to employer contributions ineligible for guarantee of corporation; adjustment of vested benefits charge to reflect plan amendment.
  - (b) Reduction of accrued benefits; notice by plan sponsors to plan participants and beneficiaries.
  - (c) Recoupment by plan of excess benefit payment.
  - (d) Amendment of plan to increase or restore accrued benefits previously reduced or rate of future benefit accruals; conditions, applicable factors, etc.
  - (e) "Inactive participant" defined.
  - (f) Promulgation of rules; contents, etc.
- ERISA 4245 29 USC 1426 Insolvent plans.**
- (a) Suspension of payments of benefits; conditions, amount, etc.
  - (b) Determination of insolvency status for plan year; definitions.

(c) Determination by plan sponsor of plan in reorganization of resource benefit level of plan for each insolvency year; uniform application of suspension of benefits; adjustments of benefit payments.

(d) Applicability and determinations respecting plan assets; time for determinations of resource benefit level and level of basic benefits.

(e) Notice, etc., requirements of plan sponsor of plan in reorganization regarding insolvency and resource benefit levels.

(f) Financial assistance from corporation; conditions and criteria applicable.

#### **PART 4 - FINANCIAL ASSISTANCE**

##### **ERISA 4261 29 USC 1431 Assistance by corporation.**

(a) Authority; procedure applicable; amount.

(b) Conditions; repayment terms.

(c) Assistance pending final determination of application.

#### **PART 5 - BENEFITS AFTER TERMINATION**

##### **ERISA 4281 29 USC 1441 Benefits under certain terminated plans.**

(a) Amendment of plan by plan sponsor to reduce benefits, and suspension of benefit payments.

(b) Determinations respecting value of nonforfeitable benefits under terminated plan and value of assets of plan.

(c) Amendment of plan by plan sponsor to reduce benefits for conservation of assets; factors applicable.

(d) Suspension of benefit payments; determinative factors; powers and duties of plan sponsor; retroactive benefit payments.

#### **PART 6 - ENFORCEMENT**

##### **ERISA 4301 29 USC 1451 Civil actions.**

(a) Persons entitled to maintain actions.

(b) Failure of employer to make withdrawal liability payment within prescribed time.

(c) Jurisdiction of Federal and State courts.

(d) Venue and service of process.

(e) Costs and expenses.

(f) Time limitations.

(g) Service of complaint on corporation; intervention by corporation.

##### **ERISA 4302 29 USC 1452 Penalty for failure to provide notice.**

**ERISA 4303 29 USC 1453 Election of plan status.**

- (a) Authority, time, and criteria.
- (b) Requirements.
- (c) Effective date.

**SUBTITLE F - TRANSITION RULES AND EFFECTIVE DATES**

**ERISA 4402 29 USC 1461 Effective date; special rules.**