



ERISA INSURANCE & INDEMNIFICATION RISK-MITIGATION ASSESSMENT AND ACTION PLANS

ERISA imposes personal liability on fiduciaries who breach fiduciary obligations to an ERISA plan. As Department of Labor investigations and private-plaintiff litigation increases, ERISA plans and sponsors, and boards of directors, administrators, trustees, and fiduciaries, must have adequate insurance coverage and enforceable indemnification arrangements.

HOW MCDERMOTT CAN HELP

INSURANCE PORTFOLIO REVIEW

McDermott's ERISA insurance-coverage experts will analyze your policies to determine if there are gaps in coverage or areas requiring enhancement. You will receive a complete Report and Recommendation that explains your coverage, identifies coverage gaps, and includes a chart setting forth current policy language and suggested revisions. This includes an action plan to address immediate concerns with the current policies or to use during the next round of negotiations during the renewal process.

This analysis helps you understand fully what is, and what is not, covered, and obtain the broadest coverage for your particular risks.

INDEMNIFICATION REVIEW AND ADVICE

The DOL and private plaintiffs have been attacking indemnification agreements with the goal of denying indemnification and defense costs to ERISA fiduciaries.

McDermott will review who should be and who shouldn't be indemnified and ensure that indemnification provisions comply with ERISA and state law. The review will explain indemnification obligations to third-party providers and whether those obligations are covered by your insurance. The goal is to provide the greatest protection to those needing indemnification and draft indemnification provisions to work seamlessly with insurance.

COMMITMENT TO OUR CLIENTS

Our expectation is that exceptional service, when combined with our industry knowledge, will serve as a basis of a successful and mutually beneficial long-term relationship.

**McDermott
Will & Emery**

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ACCOLADES AND RECOGNITION

- National Tier 1 rankings in the areas of Litigation – ERISA and Employee Benefits (ERISA) Law
- *U.S. News - Best Law Firms 2019*
- "The combination of technical expertise and practical business approach allows them to provide support very efficiently."
- *Chambers USA 2019*
- National recognition among the top firms in Employee Benefits and Executive Compensation for ERISA Litigation, Plan Design and Transactions
- *Legal 500 US 2019*
- "The team has the resources to tackle any type of compensation and benefits issue arising in the US or abroad."
- *Chambers USA 2019*
- National recognition among the top firms in the area of Employee Benefits & Executive Compensation
- *Chambers USA 2019*
- "...they form a partnership with the client that ensures success."
- *U.S. News - Best Law Firms 2019*



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EXAMPLE REVIEW POINTS

- Limits of liability under primary and excess policies
- Who is an "Insured," including individual fiduciaries, directors, officers, employees, independent contractors, non-fiduciaries performing "settlor" functions or administrative functions, spouses, partners, and estates
- Coverage for DOL investigations and subpoenas
- Defense arrangements, choice-of-counsel, and recoupment
- Retentions and "first-dollar" coverage for individuals
- Coverage for important settlement costs, such as potential appointment of an independent trustee
- Breadth of "conduct" exclusions (e.g. exclusions for fraud or willful misconduct)
- Severability of applications and non-imputation of exclusions
- Difference in conditions coverage
- Coverage before and after corporate transactions or plan modifications
- Coverage for benefits claims
- Indemnification language that complies with ERISA 410(a)
- Indemnification contingencies to account for potential changes in ERISA law and factual developments in underlying litigation
- Interaction between insurance and indemnification and priority of payments

We work with brokers to seek insurance enhancements upon renewal. We also assist with transaction-specific policies, such as coverage for outside trustees in connection with an ESOP transaction, representations-and-warranties policies (buy-side and sell-side), and run-off coverage for post-transaction risks.

OUR TEAM

Our Employee Benefits and Executive Compensation practice group is comprised of attorneys at the forefront of ERISA insurance and indemnification issues. Our attorneys frequently present at national conferences and author thought leadership pieces on ERISA insurance and indemnification issues. We have been counsel in high-profile ERISA actions involving insurance and indemnification issues and have worked with 401(k)'s, 403(b)'s, ESOPs, other retirement plans and health & welfare plans.

ABOUT MCDERMOTT

McDermott Will & Emery partners with leaders around the world to fuel missions, knock down barriers and shape markets. With 20 locations on three continents, our team works seamlessly across practices, industries and geographies to deliver highly effective—and often unexpected—solutions that propel success. More than 1,100 lawyers strong, we bring our personal passion and legal prowess to bear in every matter for our clients and the people they serve.

We apply our deep knowledge of both legal and business considerations to help design and implement custom solutions that:

Support Corporate Objectives | Optimize Opportunities | Minimize Risk

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