

Employer

Certain court decisions speak to what may or may not be an employer for health care plan purposes.

- It is entirely proper to construe the employer, in the ERISA sense, to include affiliates and subsidiaries when such information is germane to the subject. The purposes of ERISA may not be thwarted by corporate restructuring and fractionalizing.
- Estate of a company official may not be brought in as an ERISA employer.
- Disparate groups of unrelated employers could not claim to be an ERISA employer because they failed to show that the trust was not maintained by the employer enrollees but by an entrepreneur.
- Mere status as *sole shareholder* or as *president* does not, in and of itself, put such person in the role of the employer for ERISA purposes. The employer retains the exposure and problem. If the employer is reduced to the president and *sole shareholder*, such person does not become the employer by the breaking of the corporate veil. Other decisions have been decided to the contrary, however. If it is evident that there was an attempt to use the corporate veil to shield employer, court will hold against the individual.
- Where plan was overexpansive in its scope and allowed persons clearly ineligible to participate in direct violation of the plan document, the court held that such an arrangement was not a plan as contemplated by ERISA.
- Where challenge by employer, as litigant did not involve any issue as to employer's direct plan involvement as ERISA fiduciary, the court held such action not to be appropriate. Only as a fiduciary and only for such fiduciary type duty could employer, as plan fiduciary, sue.
- Surety was established to protect a trust from an employer (a participant to the trust) not paying its required contributions timely. Such surety would not become, as such, an employer in the ERISA meaning, should such surety be called upon to pay delinquent contributions on behalf of the employer.
- Employer may sue if such employer is both employer and fiduciary in ERISA sense.