


29 CFR 2510.3-3(d)

Employee benefit plan

- (a) General. This section clarifies the definition in section 3(3) of the term "employee benefit plan" for purposes of title I of the Act and this chapter. It states a general principle which can be applied to a large class of plans to determine whether they constitute employee benefit plans within the meaning of section 3(3) of the Act. Under section 4(a) of the Act, only employee benefit plans within the meaning of section 3(3) are subject to title I.
- (b) Plans without employees. For purposes of title I of the Act and this chapter, the term "employee benefit plan" shall not include any plan, fund or program, other than an apprenticeship or other training program, under which no employees are participants covered under the plan, as defined in paragraph (d) of this section. For example, a so-called "Keogh" or "H.R. 10" plan under which only partners or only a sole proprietor are participants covered under the plan will not be covered under title I. However, a Keogh plan under which one or more common law employees, in addition to the self-employed individuals, are participants covered under the plan, will be covered under title I. Similarly, partnership buyout agreements described in section 736 of the Internal Revenue Code of 1954 will not be subject to title I.
- (c) Employees. For purposes of this section:
 - (1) An individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse, and
 - (2) A partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.
-  (d) Participant covered under the plan.
 - (1)
 - (i) An individual becomes a participant covered under an employee welfare benefit plan on the earlier of—
 - (A) The date designated by the plan as the date on which the individual begins participation in the plan;
 - (B) The date on which the individual becomes eligible under the plan for a benefit subject only to occurrence of the contingency for which the benefit is provided; or

- (C) The date on which the individual makes a contribution to the plan, whether voluntary or mandatory.
 - (ii) An individual becomes a participant covered under an employee pension plan—
 - (A) In the case of a plan which provides for employee contributions or defines participation to include employees who have not yet retired, on the earlier of—
 - (1) The date on which the individual makes a contribution, whether voluntary or mandatory, or
 - (2) The date designated by the plan as the date on which the individual has satisfied the plan's age and service requirements for participation, and
 - (B) In the case of a plan which does not provide for employee contributions and does not define participation to include employees who have not yet retired, the date on which the individual completes the first year of employment which may be taken into account in determining—
 - (1) Whether the individual is entitled to benefits under the plan, or
 - (2) The amount of benefits to which the individual is entitled, whichever results in earlier participation.
- (2)
- (i) An individual is not a participant covered under an employee welfare plan on the earliest date on which the individual—
 - (A) Is ineligible to receive any benefit under the plan even if the contingency for which such benefit is provided should occur, and
 - (B) Is not designated by the plan as a participant.
 - (ii) An individual is not a participant covered under an employee pension plan or a beneficiary receiving benefits under an employee pension plan if--
 - (A) The entire benefit rights of the individual—
 - (1) Are fully guaranteed by an insurance company, insurance service or insurance organization licensed to do business in a State, and are legally enforceable by the sole choice of the

individual against the insurance company, insurance service or insurance organization; and

(2) A contract, policy or certificate describing the benefits to which the individual is entitled under the plan has been issued to the individual; or

(B) The individual has received from the plan a lump-sum distribution or a series of distributions of cash or other property which represents the balance of his or her credit under the plan.

(3)

- (i) In the case of an employee pension benefit plan, an individual who, under the terms of the plan, has incurred a one-year break in service after having become a participant covered under the plan, and who has acquired no vested right to a benefit before such break in service is not a participant covered under the plan until the individual has completed a year of service after returning to employment covered by the plan.
- (ii) For purposes of paragraph (d)(3)(i) of this section, in the case of an employee pension benefit plan which is subject to section 203 of the Act the term "year of service" shall have the same meaning as in section 203(b)(2)(A) of the Act and any regulations issued under the Act and the term "one-year break in service" shall have the same meaning as in section 203(b)(3)(A) of the Act and any regulations issued under the Act.