

ERISA Liens: Another Concern Prior to Settlement?

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The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. In the context of workers' compensation claims or civil litigation, the subject of ERISA is usually raised when an ERISA health plan pays for the medical care of an employee or Plaintiff.

In workers' compensation claims that are denied, an employee will regularly continue to receive medical treatment paid for by his employer-provided group health plan. When the claim moves towards a settlement, the question then becomes whether the health plan needs to be refunded for the amount paid to medical providers?

The first question that needs to be answered is whether the health plan that paid for the medical treatment is an ERISA plan. Generally, most employer-provided group health plans will be covered by ERISA. There are certain ERISA exceptions for plans that are established or maintained by governmental entities or churches, but when dealing with a workers' compensation claim it is safe to assume that a group health plan operated by a private employer is covered by ERISA.

Once you conclude that a group health plan is covered by ERISA, the workers' compensation carrier or Employer then needs to determine if the group plan is the type of ERISA plan that mandates reimbursement. In determining whether the ERISA plan needs to be reimbursed for the medical expenses paid, the workers' compensation carrier or Employer needs to determine if the ERISA plan is a self-funded plan or an insured plan. A self-funded plan is one where the Employer directly pays for the medical treatment received by the plan participants. An insured plan is a plan wherein Employees pay premiums to an insurance company and then that insurance company pays for the medical treatment. Generally, only if an ERISA plan is self-funded by the Employer will ERISA's federal exemption apply. As such, if the ERISA plan is self-funded, the issue of reimbursement is likely something you are going to have to deal with at the time of settlement. If the plan is an insured plan, even if covered by ERISA, then ERISA's federal exemption will likely not apply and reimbursement will not be an issue you need to address.

The issue of dealing with ERISA liens is somewhat muted in the area of workers' compensation, as it is usually the same party that both paid for medical treatment under a group health plan (the Employer) and is funding a settlement (the Employer). Therefore, even if the ERISA health plan is self-funded, Plaintiff's attorneys will usually request a waiver of any right to reimbursement from the Employer as part of the settlement.

Dealing with a self-funded ERISA lien is somewhat more complicated in a civil claim, as the party who paid for the medical treatment (the Employer) is not the same party who is funding a settlement (normally a third-party). Therefore, in the context of a civil claim, an Employer has less of an incentive to waive their right to reimbursement, which can complicate a proposed settlement.

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