

WHAT YOU NEED TO KNOW



ERISA's "Church Plan" Exception

The Employee Retirement Income Security Act (ERISA) was signed in 1974. The U.S. Department of Labor (DOL) is the agency responsible for administering and enforcing this law. For many years, most of ERISA's requirements applied to pension plans. However, in recent years that has changed, and group plans (called "welfare benefit plans" by ERISA and the DOL) now must meet a number of requirements. Government and church plans do not need to comply with ERISA.

However, some employers are unsure if they meet ERISA's "church plan" exception. Entities associated with churches such as hospitals, schools, nursing homes, and charities are often unclear about whether they meet the exception. Under ERISA, a church plan is "any employee benefit plan established and maintained by a church or by a convention or association of churches that is exempt from tax under [IRS Code Section 501](#) with respect to which no election has been made under IRS Code Section 410(d). The plan must be established and maintained primarily for benefit of the employees of a church or convention or association of churches. Substantially all the covered individuals under the plan must be employees of the church or the convention or association of churches.

Although this might seem straightforward at first glance, determining whether a church or convention or association of churches exists is dependent on the facts and circumstances of an organization. Organizations may request a DOL opinion letter, or an IRS private letter ruling (although the DOL reserves the right to review IRS determinations via private letter) to determine if they meet the definition. To add another layer of uncertainty, courts are not bound by either DOL or IRS determinations.

Under the ERISA definition, a plan established and maintained by a church includes a plan maintained by an organization whose principal purpose is administering a benefit plan for church employees, if the organization is controlled by or associated with a church (or convention or association of churches). There is no definition for "controlled by" but it is often considered to be corporate control. The term "associated with" means the organization "shares common religious bonds and convictions with the church or convention of associated churches," which is subject to various interpretations. There is a three-prong or three-factor test that employers can use to help determine if it meets this requirement, which is referred to as the "*Lown Test*."

- Whether the religious institution plays any official role in the governance of the organization;
- Whether the organization receives [financial] assistance from the religious institution; and,
- Whether a denominational requirement exists for any employee or patient/customer of the organization.

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In 2017, the Supreme Court [ruled](#) that employee benefit plans established and maintained by church-affiliated organizations (such as church-affiliated hospitals) were church plans under the ERISA definition. However, the court did not address all of the questions regarding statutory language of the principal purpose of the affiliated organization, which could create further litigation or legislation.

Practically speaking, employers that believe they are affiliated with a church or religious organization should seek guidance from their legal counsel with respect to whether they meet the ERISA exemption. Entities that believe they meet the exemption should take care not to reference ERISA in documents relating the plan, as courts often determine that, upon reference, an organization makes itself subject to ERISA, regardless of its church status.

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