

## When Is An Insurance Policy Not An ERISA Plan?

Article By:

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ERISA makes clear that it governs “any plan, fund, or program ... established ... by an employer ... for the purpose of providing [health benefits] for its participants.” 29 U.S.C. § 1002(1). Although most employee benefit plans that provide benefits to employees are governed by ERISA, some arrangements are not. The Northern District of Illinois’ recent decision in [\*Till v. National General Accident & Health Insurance Co.\*](#), No. 21-1256 (N.D. Ill. Mar. 8, 2022), provides some guidance into what kinds of arrangements may not constitute an ERISA plan.

The plaintiff in *Till* visited a hospital for medical treatment, and the following day, purchased a health insurance policy issued by the defendant. The policy was purchased through an association and provided coverage only to the plaintiff. The day after purchasing the policy, the plaintiff returned to the hospital and was treated for a pulmonary embolism. The defendant denied coverage, citing the policy’s pre-existing condition exclusion. The plaintiff then filed suit, claiming the denial violated ERISA. According to the plaintiff, the policy qualified as an ERISA plan because he bought it through an association of employers.

The defendant moved to dismiss, arguing the policy was not governed by ERISA. The court agreed, finding that ERISA governs plans arising from employment relationships, and that one cannot have an employment relationship with oneself. In other words, ERISA’s definitions of employer and employee contemplate separate parties. Here, the plaintiff had not alleged that his business had any employees, and the policy provided coverage only to plaintiff as an individual.

In addition, the court found that the plaintiff had not plausibly alleged that the association through which he had purchased his policy satisfied ERISA’s definition of an “association of employers.” The court stated that, under the relevant regulation, for an association to fit within the definition, it must be established by a group of employers to provide benefits to employees, have at least one substantial business purpose unrelated to the provision of benefits, have employer members that control the plan, and meet the various documentation requirements for plans established by the Department of Labor. The court found that plaintiff did not plausibly allege that the association met these requirements because the plaintiff alleged no facts about the association. For this additional reason, the policy was not governed by ERISA and the case was dismissed.

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