

Explanation of ERISA Plan and Arbitration Agreement

“ERISA,” the acronym for the federal “Employee Retirement Income Security Act of 1974,” protects employers who sponsor benefit plans (both pension and welfare plans) for their employees, by limiting the state law rights and remedies of an employee dissatisfied with the handling of his or her claim for benefits under the employer’s plan. Under ERISA, an aggrieved employee who is determined to have had his or her benefits improperly denied is entitled only to the denied benefits and, perhaps, attorneys’ fees that he or she incurred to prove that the denial was improper. Damages for pain, suffering and mental anguish, treble damages and punitive damages are NOT recoverable.

The U.S. Department of Labor regulates ERISA Plans. An employer cannot avoid complying with their regulations simply by not having a written plan. Their regulations treat as a “plan” any benefit program that has defined benefits and beneficiaries and a method for financing the benefits. In short, once a non-subscriber to the Texas Workers’ Compensation Act purchases an insurance policy that provides funds for benefits for the company’s employees, that company has, like it or not, an ERISA plan and is subject to DOL—and their penalties for noncompliance with those regulations. The issue, then, is not whether a non-subscriber will have an ERISA Plan, but how will it design its ERISA Plan to provide itself maximum legal protection.

The ERISA Plan that accompanies the CEI/VIP Policy, at nominal additional charge to the insured, is, in essence, the “agreement” that exists between the insured/employer and its employees, while the CEI Policy is the agreement between the insured and the CEI insurer. It is therefore critical that the coverages, exclusions and terms of the ERISA Plan match exactly those of the CEI/VIP Policy. Otherwise the insured/employer risks promising benefits to its employees for which it does not have insurance (and any such payments also will not apply to its CEI/VIP Policy’s self-insured retention). For that reason, an employer simply cannot continue to use an ERISA Plan modeled on the insurance policy from years ago without risking this “gap” between the old Plan and the new CEI/VIP Policy’s provisions.

The Arbitration Agreement provided with the CEI/VIP Policy is designed to protect the insured employer by subjecting the claims of its employees to binding arbitration, preventing employees from pursuing a lawsuit against the employer. Although the CEI/VIP Policy only provides liability coverage for on-the-job injuries, the ERISA Plan’s Mandatory Arbitration Agreement covers all types of disputes between the employee and employer, including discrimination, harassment, retaliation and wrongful discharge claims. For those employees who are not notified of the ERISA Plan with Mandatory Arbitration, the liability for their on-the-job injury claims is still covered by the CEI/VIP Policy’s liability coverage.