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Benefits Alert

February 10, 2026

New ERISA Class Actions challenge "voluntary" accident, critical illness, and hospital indemnity benefits

By Kelly Hathorn and Emily Pellegrini

Learn what the new ERISA lawsuits allege and what employers, brokers, and plan sponsors should understand about emerging compliance and litigation risks.

What's the impact?

- These filings signal a coordinated litigation strategy that could fundamentally reclassify certain "voluntary" benefits as ERISA-covered plans, significantly expanding fiduciary exposure for employers.
- By targeting both employers and national benefits consultants, the lawsuits raise the stakes for plan design, vendor relationships, and long-standing assumptions about ERISA's safe-harbor boundaries.
- If successful, these claims could trigger increased compliance obligations, heightened litigation risk, and closer scrutiny of how voluntary insurance benefits are structured and communicated.

In late December 2025, four virtually identical ERISA class-action complaints were filed against large employers and their national benefits consultants, alleging that their "voluntary" insurance benefits, such as accident, critical-illness, cancer, and hospital-indemnity coverage, were actually ERISA-covered welfare benefits, to which the employer owed fiduciary duties of prudence and loyalty.

Voluntary insurance benefits where the entire premium is paid by employees and the employer has only limited involvement in transmitting premiums can be exempt from ERISA under the Department of Labor's "voluntary plan" safe harbor. The complaints are notable because they allege that these programs went beyond the safe harbor, and that once an employer assists in marketing the benefits, issues enrollment reminders to employees, or notifies the carrier of new employees, it is "endorsing" the coverage, and the program is an ERISA welfare plan. The complaints further claim that each employer-defendant conceded ERISA-status in its annually filed Form 5500s.

As a result, the complaints allege that the employers are ERISA fiduciaries and are subject to ERISA's prohibited transaction rules. As fiduciaries, employers have a duty to monitor the compensation of benefit providers to ensure they are receiving only "reasonable compensation" for services to the plan, which the complaints allege did not occur in these cases.

The complaints are also noteworthy because they were filed by Schlichter Bogard, a plaintiffs' firm known for initiating the wave of excessive fee lawsuits against 401(k) and 403(b) plans.

While it may be too soon for employers to change their welfare benefit offerings, we suggest that employers take stock of the voluntary benefits they offer, and consider the following:

Practical considerations for employers

CONFIRM PLAN STATUS AND DOCUMENTATION

- Identify all supplemental/voluntary products (such as accident, critical illness, cancer, hospital indemnity).
- Does the program rely on the voluntary plan safe harbor to be exempt from ERISA? If so, verify that all conditions are met and document that analysis. Re-examine communications to employees about the program, including marketing content, to avoid language that suggests employer endorsement rather than passive availability.
- Where the benefit is (or may be) an ERISA welfare plan, conduct an ERISA-compliance audit. Be sure plan documents, summary plan descriptions, and Form 5500s properly document and describe fiduciary roles and responsibilities. Review vendor contracts and fee disclosures to ensure provider compensation is reasonable.
- As necessary, engage ERISA counsel to evaluate whether your voluntary benefit programs fall

within the Department of Labor safe harbor.

GOVERNANCE AND OVERSIGHT OF ALL VOLUNTARY BENEFITS

- Assign responsibility (benefits committee or comparable body) for review of voluntary benefits and record deliberations in meeting minutes.
- Make sure committee members and HR/benefits staff understand the difference between "voluntary" in common parlance and "voluntary" under the ERISA safe harbor.
- Document, document, document. Courts focus less on results and more on process. Written records of prudent review and decision-making remain the best defense.

Why thoughtful oversight is essential for employee-paid benefits

These new lawsuits underscore that fully employee-paid benefits are not automatically risk-free for plan sponsors. Thoughtful, proactive governance—backed by clear documentation and periodic market checks—can greatly reduce exposure while preserving the valuable flexibility that voluntary benefits provide to employees.

Our Employee Benefits & ERISA Litigation Team is monitoring these cases closely. If you would like assistance assessing your voluntary benefits program or responding to participant inquiries, please contact any member of our group.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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