
29 C.F.R. § 2510.3-55

Definition of employer—Association Retirement Plans and other multiple employer pension benefit plans.

(a) *In general.* The purpose of this section is to clarify which persons may act as an “employer” within the meaning of section 3(5) of the Act in sponsoring a multiple employer defined contribution pension plan (hereinafter “MEP”). The Act defines the term “employee pension benefit plan” in section 3(2), in relevant part, as any plan, fund, or program established or maintained by an employer, employee organization, or by both an employer and an employee organization, to the extent by its express terms or as a result of surrounding circumstances such plan, fund, or program provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond. For purposes of being able to establish and maintain an employee pension benefit plan within the meaning of section 3(2), an “employer” under section 3(5) of the Act includes any person acting directly as an employer, or any person acting indirectly in the interest of an employer in relation to an employee benefit plan. A group or association of employers is specifically identified in section 3(5) of the Act as a person able to act directly or indirectly in the interest of an employer, including for purposes of establishing or maintaining an employee benefit plan. A bona fide group or association of employers (as defined in paragraph (b) of this section) and a bona fide professional employer organization (as described in paragraph (c) of this section) shall be deemed to be able to act in the interest of an employer within the meaning of section 3(5) of the Act by satisfying the criteria set forth in paragraphs (b) and (c) of this section, respectively.

(b)

(1) *Bona fide group or association of employers.* For purposes of title I of the Act and this chapter, a bona fide group or association of employers capable of establishing a MEP shall include a group or association of employers that meets the following requirements:

(i) The primary purpose of the group or association may be to offer and provide MEP coverage to its employer members and their employees; however, the group or association also must have at least one substantial business purpose unrelated to offering and providing MEP coverage or other employee benefits to its employer members and their employees. For purposes of satisfying the standard of this paragraph (b)(1)(i), as a safe harbor, a substantial business purpose is considered to exist if the group or association would be a viable entity in the absence of sponsoring an employee benefit plan. For purposes of this paragraph (b)(1)(i), a business purpose includes promoting common business interests of its members or the common economic interests in a given trade or employer community and is not required to be a for-profit activity;

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