
29 C.F.R. § 2560.521-1

Cease and desist and seizure orders under section 521.

(a) *Purpose.* Section 521(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1151(a), authorizes the Secretary of Labor to issue an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. Section 521(e) of ERISA authorizes the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition. An order may apply to a MEWA or to persons having custody or control of assets of the subject MEWA, any authority over management of the subject MEWA, or any role in the transaction of the subject MEWA's business. This section sets forth standards and procedures for the Secretary to issue ex parte cease and desist and summary seizure orders and for administrative review of the issuance of such cease and desist orders.

(b) *Definitions.* When used in this section, the following terms shall have the meanings ascribed in this paragraph (b).

(1) *Multiple employer welfare arrangement (MEWA)* is an arrangement as defined in section 3(40) of ERISA that either is an employee welfare benefit plan subject to Title I of ERISA or offers benefits in connection with one or more employee welfare benefit plans subject to Title I of ERISA. For purposes of section 521 of ERISA, a MEWA does not include a health insurance issuer (including a health maintenance organization) that is licensed to offer or provide health insurance coverage to the public and employers at large in each State in which it offers or provides health insurance coverage, and that, in each such State, is subject to comprehensive licensure, solvency, and examination requirements that the State customarily requires for issuing health insurance policies to the public and employers at large. The term health insurance issuer does not include group health plans. For purposes of this section, the term "health insurance coverage" has the same meaning as in ERISA section 733(b)(1).

(2) *The conduct of a MEWA is fraudulent:*

(i) When the MEWA or any person acting as an agent or employee of the MEWA commits an act or omission knowingly and with an intent to deceive or defraud plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, the Secretary, or a State regarding:

(A) The financial condition of the MEWA (including the MEWA's solvency and the management of plan assets);

(B) The benefits provided by or in connection with the MEWA;

(C) The management, control, or administration of the MEWA;

(D) The existing or lawful regulatory status of the MEWA under Federal or State law; or,

(E) Any other material fact, as determined by the Secretary, relating to the MEWA or its operation.

(ii) Fraudulent conduct includes any false statement regarding any of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section that is made with knowledge of its falsity or that is made with reckless indifference to the statement's truth or falsity, and the knowing concealment of material information regarding any of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section. Examples of fraudulent conduct include, but are not limited to, misrepresenting the terms of the benefits offered by or in connection with the MEWA or the financial condition of the MEWA or engaging in deceptive acts or omissions in connection with marketing or sales or fees charged to employers or employee organizations.

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