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370.01 Are HSAs covered by ERISA?

HSAs are generally not subject to the Employee Retirement Income Security Act of 1974 (ERISA).HSA plans avoid much of the complexity that goes with an ERISA covered plan, making it a good choice for employers desiring greater simplicity. An employer that exercises too much discretion over employees’ HSAs could cause an employer HSA program to become an ERISA plan, but that is not likely.

To avoid ERISA coverage, the establishment of an HSA must be completely voluntary on the part of the employee and the employer cannot do any of the following.

* Limit the ability of eligible individuals to move their funds to another HSA beyond restrictions imposed by HSA law.
* Impose conditions on utilization of HSA funds beyond those imposed by HSA law.
* Make or influence the investment decisions with respect to funds contributed to an HSA.
* Represent that the HSAs are an employee welfare benefits plan.
* Receive any payment or compensation in connection with an HSA.

A common practice of employers offering HSAs is to select one HSA provider for all employees to simplify employer administration of the plan. This practice, in itself, does not violate any of the above conditions.[[1]](#footnote-1) However, a concern exists if that HSA provider limits investment options. The Department of Labor (DOL) states “the mere fact that employer selects an HSA provider to which it will forward contributions that offers a limited selection of investment options … would not, in the view of the Department, constitute the making or influencing of an employee’s investment decisions giving rise to an ERISA-covered plan so long as employees are afforded a reasonable choice of investment options and employees are not limited in moving their funds to another HSA.” The DOL, however, also states: “[t]he selection of a single HSA provider that offers a single investment option would not, in the view of the Department, afford employees a reasonable choice of investment options.”[[2]](#footnote-2)

A couple of other common employer practices are also permitted without an HSA program becoming subject to ERISA. An employer can pay for fees associated with the HSA without the plan becoming an ERISA plan.[[3]](#footnote-3) An employer can unilaterally open an HSA for an employee and deposit employer funds into that HSA and still meet the “completely voluntary” requirement to avoid ERISA coverage.[[4]](#footnote-4)

The employer cannot receive a discount on another product offered by the HSA custodian in exchange for using the custodian for its employees’ HSAs.

If an HSA program is covered by ERISA, the employer must: (1) file the Form 5500 annually, (2) provide employees Summary Plan Descriptions, (3) be a fiduciary for the plan, and (4) meet other ERISA imposed terms. HSAs are not designed as ERISA plans and employers generally should seek to avoid ERISA coverage. If the plan does become an ERISA plan, the employer will face a number of challenging questions in applying ERISA to an HSA program.

1. DOL FAB 2006-02 [↑](#footnote-ref-1)
2. DOL FAB 2006-02, A5 [↑](#footnote-ref-2)
3. DOL FAB 2006-02, A1 [↑](#footnote-ref-3)
4. DOL FAB 2006-02, A7 [↑](#footnote-ref-4)