ERISA @ 50: PAST, PRESENT, AND FUTURE

THE EVOLUTION OF ERISA PLANS AND THEIR FIDUCIARIES

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On September 2, 1974, President Gerald Ford signed the Employee Retirement Income Security Act of 1974 as amended, 29 U.S.C. §§ 1001 et seq. (the "***Act***") into law, noting at the signing that "Today, with great pleasure, I am signing into law a landmark measure that may finally give the American worker solid protection of his pension plan." Since that date over 50 years ago, the Act has been amended and modified to add additional protections, refine prior protections provided by the Act, and extend the protections of the Act to all aspects of employee benefit plans. *See Part VI below for a list of some key amendments.*

As the Act celebrates its 50th "birthday", it provides an opportunity for practitioners to further examine the origins of the Act, whether its intended goals have been achieved and possible further evolution of the Act. This paper provides an overview of the history of the Act as well as an outline for discussing both (i) whether the Act has achieved its original and modified goals, and (ii) what the future looks like for employee benefit plans in light of recent technological developments, such as artificial intelligence, and litigation trends.

I. HISTORY OF THE ACT

Prior to the enactment of the Act, generally the only regulation of benefit plans was through the federal income tax laws, which provided tax incentives for employers to provide certain "qualified" retirement plans, and other more limited legislation enacted by Congress, such as the Welfare and Pension Disclosure Act of 1958, intended to protect the financial integrity of pension plans. None of these laws provided a detailed infrastructure for the operation and compliance obligations of employee plans, and none of these laws mandated funding levels or protected the benefits of participants in the plans. However, the closing of the Studebaker-Packard Corporation ("***Studebaker***") automobile plant in 1963 raised alarm in lawmakers regarding the need to protect participants in retirement plans from employer actions. Following the plant closing, Studebaker terminated its retirement plan for hourly workers and the plan was unable to meet its obligations. This failure to meet benefit obligations spurred the United Auto Workers to urge lawmakers to enact legislation addressing default risk and termination insurance for pension plans.[i]

However, as can happen with any legislation, the Act was stalled in committee for several years. In the midst of the Watergate scandal, and on the heels of the Vietnam War, Congress wanted to enact legislation that was pro-employee, and the Act was the only legislation that was close enough to completion to be enacted. While the Act was close to completion, the one issue that Congress had not resolved was what federal agency should be given the authority to enforce the Act, the U.S. Department of Labor or the U.S. Department of Treasury. In their haste to push the Act through, this dilemma was never solved, and instead, Congress enacted the Act in 1974 with both agencies given enforcement authority over the Act. This split in authority resulted in duplicative provisions in the Labor Code and the Internal Revenue Code, and a risk for employers that they will face enforcement actions from two different agencies for the same violation of the Act.

Since its enactment, Congress has made numerous amendments to the Act (see Part VI below), each time trying to better achieve the original purposes of the Act to address employee benefits security, standards of plan administration, eligibility and vesting standards, adequate funding for plan benefits, fiduciary standards, disclosure of plan benefit information, and enforceability of participant rights. However, with each amendment, the complexity of the Act has increased, making it even more important for practitioners to understand the basics of the Act in order to assist plan sponsors with compliance.

II. STRUCTURE OF THE ACT

The Act is organized into four titles and the first title is divided into seven Parts, with each title and part addressing the core purposes of the Act. Part 1 addresses reporting (to the government agencies with jurisdiction over employee benefit plans) and disclosure (to the persons participating in the plans and their beneficiaries). Part 2 addresses participation and vesting standards for retirement plans (designed to protect employees to ensure that the retirement plans cover eligible persons when required and that the participants then earn vested rights to the benefits under the plan). Part 3 provides the funding requirements (for retirement plans and particularly for defined benefit plans). Parts 2 and 3 also are included in the Internal Revenue Code of 1986, as amended (the "***Code***").

Part 4 addresses the fiduciary requirements, including the provisions for participant directed accounts, the prohibition on engaging in prohibited transactions and the statute of limitation for bringing actions based upon a breach of fiduciary duty. Part 5 provides the administration and enforcement mechanism, including the provisions allowing the U.S. Department of Labor to enforce a participant's rights and to enforce the legal requirements of the Act, and the procedures by which participants and beneficiaries can make claims for benefits and appeal denials of benefits. Part 6 includes the requirements for health plans to offer certain employees the right to continue coverage under the health plan after it would otherwise cease for limited periods (also known as COBRA continuation coverage). Part 7 includes the requirements that a health plan may not discriminate against a person based upon their health status (also known as "***HIPAA***").

Title II of the Act deals with the jurisdiction of the federal agencies enforcing the Act and certain procedural issues. Title III of the Act contains the provisions for terminating defined benefit pension plans and the establishment of the Pension Benefit Guaranty Corporation ("***PBGC***") that insures some of the benefits of defined benefit plans when the employers relinquish the defined benefit plans in bankruptcy or upon dissolution of the employer.

III. THE ACT'S PAST: A LOOK BACK AT THE ACT AND ITS GOALS

As noted previously, the Act was passed for a myriad of reasons, the primary one of which was to protect participants and beneficiaries of employee benefit plans from a loss of retirement plan savings. Individuals who handled plan assets became "fiduciaries", who were now subject to a heightened standard of care, as described below.

<u>Part 4 – Fiduciary Responsibility</u>

Part 4 of Title I sets forth the requirements relating to fiduciary responsibility. This part of the Act generally applies to all plans other than top hat plans.[ii] Every employee benefit plan must have one or more named fiduciaries identified in the plan documents. A fiduciary is anyone who exercises any discretionary authority or discretionary control respecting management of the plan or has discretionary authority or discretionary responsibility in the administration of the plan.[iii] Even if a person is not named as a fiduciary, if he or she exercises discretion, authority, or control of the plan's assets, he or she will be a fiduciary. Common examples of fiduciaries with respect to an employee benefit plan include: (i) the plan's trustee(s); (ii) the plan administrator (which, if the plan merely says, "the company," will be the board of directors of the company); (iii) an investment manager, and (iv) an investment advisor.

Section 404(c) of the Act provides some protections to fiduciaries for investment losses under individual account qualified plans.[iv] If a participant can direct the investment of his account balance and the plan meets the requirements of Section 404(c) of the Act, then no fiduciary will be liable for losses attributable to a participant's exercise of control. In order to receive this protection, the participants must be provided with adequate information so that they can make informed investment decisions about the investments in the plan, and the participants must be given a diverse menu of investment choices under the plan. However, Section 404(c) of the Act does not absolve fiduciaries from the obligation to diversify investments in the plan to minimize risk of loss (see the discussion below regarding a duty to diversify).

All fiduciary liability is "joint and several" for all fiduciaries participating in the breach.

Section 404(a) of the Act sets forth the basic duties of a fiduciary.[v] The four standards of conduct for fiduciaries of qualified retirement plans are: (i) duty of loyalty; (ii) duty of prudence; (iii) duty to diversify investments; and (iv) duty to follow plan documents to the extent they comply with the Act.

1. *Duty of Loyalty*

The Act requires plan fiduciaries to discharge their duties solely in the interest of the participants and beneficiaries, and for the exclusive purpose of providing participants and beneficiaries with benefits and defraying reasonable expenses of administering the plan.[vi] This rule is supplemented by the extensive prohibited transaction provisions (see discussion below), as well as by Section 403 of the Act, which provides that the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries. The plan administrator should maintain a list of parties-in-interest (*i.e.*, members of the plan sponsor's board of directors generally are among the parties-in-interest) with whom engaging in certain transactions constitute prohibited transactions. Engaging in a prohibited transaction for which there is not an exemption, can result in a penalty of up to 20% of the amount involved and being required to reverse the transaction. Parties-in-interest include, but are not limited to, fiduciaries to the plan; the employer whose employees are covered by the plan; persons providing services to the plan; the plan administrator; an officer, trustee, custodian or counsel to the plan; certain owners of 50% or more of the employer; employees, officers, directors or 10% shareholders of the employer maintaining the plan; and certain other related parties. For example, the plan should not purchase and lease back to the employer its office buildings or other real or personal property unless it obtains a prohibited transaction exemption covering the transactions. Parties-in-interest cannot represent both themselves and the plan in a transaction with the plan.

Fiduciaries breach the exclusive benefit rule when they mismanage or divert plan assets to parties in interest or individuals who are not participants in or beneficiaries of the plan, and when they fail to take sufficient steps to collect amounts owed to the plan (*e.g.*, failing to follow up on an employer who fails to deposit the employee salary reduction contributions as soon as they become identifiable). Fiduciaries also breach the exclusive benefit rule when they act in their own best interests or in the interests of the employer when dealing with the plan's assets, or when their dealings with the plan are not in the best interest of the plan's participants. A trustee may not deal with the assets of the plan in his own interest (*e.g.*, a fiduciary may not negotiate on behalf of himself or his employer against himself as trustee for the plan to sell the plan investments or services).

On the other hand, fiduciaries do not violate their duty to act for the exclusive benefit of participants and their beneficiaries by taking action which, after careful investigation, would best promote the interests of participants just because the action might incidentally benefit the employer or themselves as employees or officers of the employer. However, fiduciaries have a duty to avoid placing themselves in a position where their acts as employees or officers would prevent their functioning in complete loyalty to the participants. If a transaction involves a substantial conflict of interest, fiduciaries should either (i) resign in favor of a neutral fiduciary for that particular transaction, or (ii) employ independent legal and investment counsel for advice and conduct an intensive, independent and scrupulous investigation of the facts regarding the particular transaction, and verify that the contemplated transaction is not a prohibited transaction with a party-in-interest for which there is no statutory or class exemption.

When faced with dual loyalties, in order to establish that the fiduciary acted in the best interests of participants, a fiduciary should document that its actual deliberations, discussions, and/or interpretations of the plan provisions. In addition, the fiduciary should document that it investigated alternative actions and relied on outside advisors before taking action. The advice of outside advisors should be in a written document to preserve the record of the advice. Fiduciaries bear a risk of liability when they act with dual loyalties without obtaining the impartial guidance of a disinterested outside advisor to the plan.

Use of plan assets in a contest for corporate control, either as a defensive mechanism or as part of the takeover attempt, presents a particular test of loyalty for plan fiduciaries. Violations of the exclusive benefit rule occur where plan fiduciaries, actively engaged in control contests with substantial interests in them, invest the trust's assets in companies involved in the contests without making intensive, independent and scrupulous investigation of investment options open to the trust. At a minimum, fiduciaries must seek independent advice, and if they face substantial potential conflicts, fiduciaries may need to resign temporarily as mentioned above, and have an independent fiduciary appointed.

It is important to document the discussions and deliberations which demonstrate the fiduciaries' process and considerations so that there is a record of the fiduciaries' intent and procedural compliance.

Out of the duty of loyalty also flows the duty to communicate truthfully to the plan participants and beneficiaries regarding their benefits under the plan.[vii] Making intentional statements about the future of benefits is an act of plan administration and thus a fiduciary act.[viii]

2. *Duty of Prudence*

The duty of prudence requires a fiduciary to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In other words, a fiduciary must act reasonably in light of the circumstances.

A fiduciary may satisfy the prudence requirements by giving "appropriate consideration" to the facts and circumstances that, given the scope of the fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved and act accordingly. "Appropriate consideration" includes a determination by the fiduciary that the particular investment is reasonably designed, as part of the portfolio, to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain and such other factors as (i) the composition of the portfolio with regard to diversification; (ii) the liquidity of the portfolio; and (iii) the projected return of the portfolio. Another appropriate consideration is the expected return on alternative investments with similar risks available to the plan. However, prudence is not analyzed in terms of the actual performance of any particular investment but rather in terms of the anticipated total performance of the portfolio.

Prudence is measured by analyzing the process used in selecting an investment as opposed to the investment's overall performance. Evaluating prudence involves the examination of the scope and diligence of the fiduciaries' investigation and measuring their performance for consistency with the needs and purposes of the plan. The deliberations and decisions regarding the selection of investments should be documented to make a record of the fiduciaries' prudent actions and processes. Any advice received on investment selection or diversification from outside advisors also should be documented. Maintaining a statement of investment policy designed to further the purposes of the plan and its funding policy is consistent with the duty of prudence. Following the investment policy in selection of the investments and updating it as needed so that the fiduciaries follow the plan's investment policy is an important part of documenting the fiduciaries' prudence.

Circumstances may require that fiduciaries secure independent advice concerning their options in order to comply with the Act's prudence requirements. Such advice must be weighed carefully by the fiduciaries. Fiduciaries should review the data gathered by an advisor to assess its significance and to supplement it where necessary. The fiduciaries' core obligation is making an independent inquiry before investing. Thus, the key, upon review, will be reviewing the documentation of the fiduciaries' decision-making process. Fiduciaries should request full disclosure of all fees and direct or indirect compensation the plan's service providers or investment advisers receive as the result of their relationship with the plan as well.

The fiduciaries should consider retaining professional investment advice to select and monitor investment performance if they do not have sufficient investment expertise. The fiduciaries should consider the following when selecting investments: comparisons to similar funds, diversification of portfolio, liquidity, projected return, historical returns, investment managers for the funds, expenses and risk related factors.

In addition to acting with care in its own decision-making activities, a fiduciary is required to periodically monitor the activities of any investment manager appointed by such fiduciary as to the management of plan assets. To comply with the duty to monitor, fiduciaries should properly document the activities that are subject to monitoring as well as the actual deliberations, discussions and reviews conducted by the fiduciaries.

3. *Duty of Diversification*

The Act imposes upon a fiduciary a duty to diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. The Act does not provide any particular degree of investment concentration that would violate the diversification requirement, but instead relies on a prudent fiduciary to consider the facts and circumstances surrounding each plan and each investment. In evaluating investment concentration versus diversification, a fiduciary should consider: (i) the purpose of the plan; (ii) the size of the investment; (iii) economic and market conditions; (iv) the type of investment (debt or equity); (v) the geographic dispersion of investments; (vi) the investment distribution among industries; (vii) the dates of maturity; (viii) how the investment fits in the plan's portfolio and with the plan's investment policy; (ix) the fees, including whether or not the fees are reasonable and proper; and (x) if there are any contractual restrictions on liquidity or upon trading that may not be consistent with the plan's liquidity needs or investment policy or which must be communicated to participants so they know the restrictions on making investment election changes with respect to such investments. A fiduciary usually should not invest an unreasonably large proportion of a plan's portfolio in a single security, in a single type of security or in various securities dependent upon the success of a single enterprise or upon conditions in a single locality (*e.g.*, the plan should not invest a large portion of its assets in a single building or in a single business or in a single piece of art work).

4. *Duty to Act In Accordance with Plan Documents*

The Act provides that fiduciaries must discharge their duties in accordance with the documents and instruments governing the plan insofar as they are consistent with the Act. The fiduciary must determine if the plan documents are consistent with the Act. A fiduciary breaches its duty to follow the plan if it disregards the plan without showing a reason why the plan should not be followed. However, a fiduciary does not breach its duty to follow the plan if it fails to follow the plan simply because of an erroneous interpretation made in good faith.

5. *Prohibited Transactions and Disclosure*

A fiduciary to a qualified retirement plan must not only comply with the duties described in paragraphs 1 through 4 above, but it also must not permit the plan to engage in any prohibited transactions and must be careful in making disclosures to participants or beneficiaries. A person or group who has the authority to appoint and remove a fiduciary to a plan also has the duty to monitor such fiduciary's performance. The power to appoint and remove a fiduciary to an employee benefit plan has been found to make the party or group with such power also a fiduciary to the plan.

The Act prohibits fiduciaries from allowing certain transactions between the plan and a party in interest. Specifically, the plan and a party-in-interest may not enter into the following transactions:

- sale or exchange, or leasing of any property between the plan and a party-in-interest;
- lending of money or other extension of credit between the plan and a party-in-interest;
- furnishing of goods, services, or facilities between the plan and a party-in-interest;
- transfer to, or use by or for the benefit of, a party-in-interest, of any assets of the plan;
- acquisition of employer securities or employer real property in an amount greater than 10% of plan assets;
- a fiduciary self-dealing (dealing with the plan's assets for the benefit of his own interests);
- a fiduciary acting in any capacity and dealing with the plan on behalf of a party adverse to the plan or its participants and beneficiaries; or
- a fiduciary personally receiving consideration from any party dealing with the plan in a transaction that involves the plan's assets.

A party in interest is basically any party providing services to the plan, the employer of employees covered by the plan, a fiduciary of the plan or any party owning directly or indirectly a certain percentage of the employer, and a number of other related individuals (*e.g.*, directors, shareholders and officers) and related entities. Fiduciaries must act with prudence in investigating whether a person is a party in interest. As a result, in a transaction, fiduciaries must review whether the transaction involves a party in interest. The plan should identify its parties in interest (the list of parties in interest is requested in some governmental audits).

Engaging in a prohibited transaction results in the imposition of a 15% excise tax on the amount involved in a prohibited transaction. Such excise tax can be increased to 100% if the prohibited transaction is not timely corrected.

Part 4 also creates disclosure obligations in addition to those expressed in Part 1. A Part 4 obligation would focus on the extent to which the duty to act solely in the interest of plan participants and beneficiaries encompasses a collateral duty to provide participants and beneficiaries with information they need to exercise their rights effectively under an employee benefit plan, to protect their rights under the Act and to make informed decisions.

A fiduciary has the duty to inform participants and beneficiaries of their rights. A fiduciary must give complete and accurate information in response to participants' questions, though it does not have to disclose its internal deliberations. Fiduciaries violate their duties when they participate knowingly and significantly in deceiving a plan's participants and beneficiaries in order to save the employer money at the participants' expense.

IV. THE ACT'S PRESENT: GRADING THE ACT'S ORIGINAL AND MODIFIED GOALS

As illustrated in Part VI, the Act has been amended numerous times since its original adoption, and accordingly, it is not surprising that the goals of the Act have changed over time.

1. Impact of shift from defined benefit pension plans to defined contribution 401(k) plans and how this shift has affected the retirement security of workers

2. Changing role of fiduciary in defined contribution plan world and outsourcing of plan administration to third parties

3. Whether subsequent legislation such as EGTRRA, Pension Protection Act, HEART and Secure Act 1.0 have successfully filled some of the gaps of the Act

4. State of the Act preemption and attempts of states to regulate benefit plans

V. THE ACT'S FUTURE: WHAT IS NEXT FOR BENEFIT PLANS? THE ROLE OF AI, REGULATION AND LITIGATION IN THE FUTURE OF BENEFIT PLANS

Without a crystal ball, it is impossible to predict the future of the Act or employee benefits. The original drafters of the Act never could have envisioned the changes over the past 50 years to the workforce, technology, and the scope of employee benefits. Nevertheless, there are several current developments that may provide some insight into what the next phase of employee benefits law will address, such as:

1. Continuing developments with artificial intelligence, such as the use of artificial intelligence to provide benefit plan advice, including assisting employees with investment decisions and enrollment

2. An increasingly mobile workforce, the "gig" economy, and remote work challenges

3. Litigation trends, and tenacious plaintiffs' bar, instituting litigation relating to fees and investments and healthcare coverage

4. Safety of retirement assets- is enough being done to protect retirement assets from cyberfraud?

5. What is the next major piece of benefit plan legislation?

VI. LIST OF AMENDMENTS TO THE ACT

The following is a non-comprehensive list of some of the key amendments to the Act over the past 50 years:

1. Tax Reduction Act of 1975 (Pub. L. 94-12)

2. Tax Reform Act of 1976 (Pub. L. 94-455)

3. Age Discrimination in Employment Act Amendments of 1978 (Pub. L. 95-256)

4. Revenue Act of 1978 (Pub. L. 95-600)
5. Pregnancy Discrimination Act of 1978 (Pub. L. 95-555)
6. Multiemployer Pension Plan Amendments Act of 1980 (Pub. L. 96-364)
7. Miscellaneous Revenue Act of 1980 (Pub. L. 96-605)
8. Economic Recovery Tax Act of 1981 (ERTA) (Pub. L. 97-34)
9. Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248)
10. Social Security Amendments of 1983 (Pub. L. 98-21)
11. Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369)
12. Retirement Equity Act of 1984 (REA) (Pub. L. 98-397)
13. Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (Pub. L. 99-272)
14. The Tax Reform Act of 1986 (Pub. L. 99-514)
15. Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509)
16. Age Discrimination in Employment Amendments of 1986 (Pub. L. 99-592)
17. Pension Protection Act of 1987 (Pub. L. 100-203)
18. Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. 100-647)
19. Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239)
20. American with Disabilities Act of 1990 (ADA) (Pub. L. 101-336)
21. Older Workers Benefit Protection Act of 1990 (Pub. L. 101-433)
22. Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101-508)
23. Civil Rights Act of 1991 (Pub. L. 102-166)
24. "GUST":
    - the Uruguay Round Agreements Act, which implemented the Uruguay Round of General Agreement on Tariffs and Trade (GATT) (Pub. L. 103-465);
    - the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (Pub. L. 103-353);
    - the Small Business Job Protection Act of 1996 (SBJPA) (Pub. L. 104-188);
    - the Taxpayer Relief Act of 1997 (TRA '97) (Pub. L. 105-34);

- the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98) (Pub. L. 105-206); and

- the Community Renewal Tax Relief Act of 2000 (CRA) (Pub. L. 106-554).

25. Small Business Job Protection Act of 1996 (Pub. L. 104-188)

26. Family Medical Leave Act of 1993 (FMLA) (Pub. L. 103-3)

27. Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191)

28. Newborns' and Mothers' Health Protection Act of 1996 (Pub. L. 104-204)

29. The Mental Health Parity Act of 1996 (Pub. L. 104-204)

30. Defense of Marriage Act of 1997 (Pub. L. 104-199)

31. Taxpayer Relief Act of 1997 (Pub. L. 105-34)

32. Balanced Budget Act of 1997 (Pub. L. 105-33)

33. Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206)

34. Higher Education Amendments of 1998 (Pub. L. 105-244)

35. The Women's Health and Cancer Rights Act (WHCRA) (Pub. L. 105-277) also called the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998

36. Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107-16)

37. Job Creation and Worker Assistance Act of 2002 (Pub. L. 107-147)

38. Jobs and Growth Tax Relief Reconciliation Act of 2003 (Pub. L. 108-27)

39. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173)

40. Mental Health Parity Reauthorization Act of 2003 (Pub. L. 108-197)

41. Pension Funding Equity Act of 2004 (PFEA) (Pub. L. 108-218)

42. Extension of Current Mental Health Parity through the Working Families Tax Relief Act of 2004 (Pub. L. 108-311)

43. Working Families Tax Relief Act of 2004 (Pub. L. 108-311)

44. American Jobs Creation Act of 2004 (Pub. L. 108-357)

45. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8)

46. Pension Protection Act of 2006 (PPA) (Pub. L. 109-280)

47. National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181)

48. Genetic Information Nondiscrimination Act of 2008 (GINA) (Pub. L. 110-233)

49. Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) (Pub. L. 110-245)

50. ADA Amendments Act of 2008 (ADAAA) (Pub. L. 110-325)

51. Emergency Economic Stabilization Act of 2008 (EESA) (Pub. L. 110-343)

52. Michelle's Law (2008) (Pub. L. 110-381)

53. Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) (Pub. L. 110-458)

54. The Mental Health Parity and Addiction Equity Act of 2008 (Pub. L. 110-343)

55. Lilly Ledbetter Fair Pay Act of 2009 (Pub. L. 111-2)

56. Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111-3)

57. American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111-5)

58. The Patient Protection and Affordable Care Act; Health Care and Education Reconciliation Act of 2010, (Pub. L. 111-148; Pub. L. 111-152)

59. Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (Pub. L. 111-192)

60. Small Business Jobs Act of 2010 (Pub. L. 111-240)

61. Omnibus Trade Act of 2010 (Pub. L. 111-344)

62. Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Pub. L. 112-9)

63. Department of Defense and Full-Year Continuing Appropriations Act of 2011 (Pub. L. 112-10)

64. Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141)

65. American Taxpayer Relief Act of 2012 (Pub. L. 112-240)

66. Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 (Pub. L. 116-94)

67. Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 Act of 2022 (Pub. L. 117-328)

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[i] *See* James A. Wooten, 'The Most Glorious Story of Failure in the Business:' The Studebaker-Packard Corporation and the Origins of ERISA, 49 Buff. L. Rev. 683 (2001).
[ii] ERISA § 401(a).
[iii] ERISA § 3(21)(1).
[iv] ERISA § 404(c).

[v] ERISA § 404.
[vi] ERISA § 404.
[vii] *Varity Corp. v. Howe*, 516 U.S.489 (1996).
[viii] *Id.*