

EMPLOYEE BENEFITS LAW — SPRING 2013
Professors Jeffrey Lewis and Todd Jackson

I. (January 10): Introduction to Employee Benefit Plans

- history of private plans
- theory and purpose
- governmental policy
- vast amount of U.S. capital in plans
- background to and passage of ERISA
- relevance of ERISA to different areas of practice

II. (January 17): Fundamentals of Plans

- types of welfare and pension plans
- tax-qualified vs. non-qualified plans
- scope of ERISA coverage
- non-ERISA-governed plans
- basic concepts (e.g., participation, vesting, and accrual; different types of benefit formulas in defined benefit plans)
- defined benefit plan funding
- plan documents
- reporting and disclosure requirements

III. (January 24): Taxation and Minimum Standards (guest speaker)

- requirements for tax-qualified plans
- tax benefits for sponsoring employers
- tax treatment for participants
- anti-discrimination rules
- limitations on contributions and benefits
- distribution requirements

IV. (January 31): Preemption, Part 1

- what is at stake (the Supreme Court has decided more than 20 ERISA preemption cases)
- what is a “plan” covered by ERISA
- conflict preemption under the Supremacy Clause
- ERISA’s statutory preemption provision
- exceptions to preemption, including the insurance savings and deemer clauses

V. (February 7): Preemption, Part 2, and Health Care Reform (Possible guest speaker)

- “betrayal without a remedy” case law
- state and local government attempts to regulate health care
- the Patient Protection and Affordable Care Act

VI. (February 14): Fiduciary Duty, Part 1

- who is a fiduciary under ERISA
- basic fiduciary standards

- co-fiduciary liability
- prohibited transactions
- individual liability

VII. (February 21): Fiduciary Duty, Part 2

- participant-directed investments
- litigation involving plan investments or offering of employer stock in employee stock ownership plans (“ESOPs”)
- litigation over fees charged to plans and participants

(This class will include a practicum)

VIII. (February 28): Benefits Claims (likely one or more guest speakers)

- exhaustion of remedies
- standard of court review
- evidence limitations
- claims based on summary plan descriptions (“SPDs”)

(This class will include a practicum)

IX. (March 7): Fiduciary Duty, Part 3

- fiduciary misrepresentation claims
- the Supreme Court’s *Varity v. Howe* and *CIGNA v. Amara* decisions
- cases involving early retirement incentive offers (the “serious consideration” cases)

X. (March 14): Civil Enforcement and Remedies, Part 1

- ERISA’s “carefully reticulated” enforcement provision, 29 U.S.C. Sec. 1132
- remedies under the different parts of that provision
- standing to sue
- liability of non-fiduciaries

XI. (March 21): Civil Enforcement and Remedies, Part 2

- statutes of limitations
- attorneys’ fees
- the ERISA exception to attorney-client privilege
- U.S. Department of Labor enforcement
- remedies for violation of ERISA’s interference with benefits provision

XII. (April 4): Spousal Rights and Rights of Same-Sex Spouses and Partners [Guest speaker]

- joint and survivor annuities under ERISA
- qualified domestic relations orders (“QDROs”)
- statutory framework regarding benefits for same-sex spouses and partners
 - DOMA
 - the Internal Revenue Code

- state relationship recognition statutes, anti-discrimination statutes, insurance regulations, and preemption questions
 - choice of law issues
- health plan issues
- applicability of spousal pension protections
- what is a spouse?

XIII. (April 11): Retiree Medical Benefits

- post-retirement termination and reduction of retiree welfare benefits under ERISA
- termination and reduction of retiree welfare benefits by governmental entities in California

XIV. (April 18): Review