

DISABILITY PLANS SUBJECT TO ERISA

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The U.S. Court of Appeals for the Third Circuit recently affirmed a district court's determination that a supplemental disability insurance policy was sufficiently endorsed by an employer to be subject to ERISA. ERISA generally applies to a plan that is "established or maintained" by an employer for the purpose of providing benefits to its participants or beneficiaries. One way a plan is considered "established or maintained" by an employer, and therefore subject to ERISA, is for an employer to endorse the benefit. In this case, the Circuit Court held that the disability benefit was endorsed by the employer because the employer encouraged its employees to enroll in the benefit and determined the program's eligibility criteria. Although sometimes difficult to determine, it is important for employers to know whether or not a benefit is subject to ERISA. This determination is significant, not only because ERISA is a federal law with remedies and procedures that differ from those available under state law, but also because the employer must adhere to the ERISA's fiduciary and reporting and disclosure rules. *McCann v. Unum Provident* (3rd Cir. 2018)