



Washington Working To Expand Multiple Employer Retirement Plan Options

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The Department of Labor published final regulations on July 31, 2019, making it easier for multiple employers to band together to sponsor a single retirement plan (i.e., a multiple employer plan or MEP), thereby reducing the costs and administrative and fiduciary responsibilities that previously may have deterred small employers from sponsoring retirement plans on their own. These Final Regulations accomplish this primarily by expanding the definition of “employer” under ERISA to include a group or association of employers, so long as the group or association satisfies several requirements, including:

- The group must have a substantial business purpose unrelated to offering the MEP;
- Each employer member must have at least one employee participating in the MEP, and participation in the MEP must be limited to employees of group members;
- The group must have a formal organizational structure;
- The group must have sufficient commonality of interests (i.e., not be open to any unrelated employer); and
- The group must not be a bank, trust company, insurance issuer, broker, or similar entity.

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The DOL's final regulations are not the only indication coming from Washington that efforts are being made to make MEPs more available to small employers in response to the President's Executive Order requiring as much. The IRS recently issued proposed regulations on July 3, 2019, that would eliminate a rule that put a MEP as a whole at risk of disqualification where just one employer-member failed to satisfy qualification requirements. There also currently is proposed legislation in Congress that, if enacted, would eliminate the commonality requirement listed above, and could pave the way for MEPs consisting of unrelated employers (i.e., open MEPs), which would give small employers even more flexibility with regard to MEPs.

While the statutory and regulatory guidance regarding MEPs is not yet entirely finalized, in light of the DOL's Final Regulations, MEPs currently are available to many groups or associations of employers, and we are happy to discuss these rules and advise employer groups or associations looking to sponsor MEPs or employers looking to participate in a MEP.