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A New Kind of Independence: Trump Accounts and the ERISA Exception

Fireworks, parades, hot dogs, and, of course, retirement savings. These are the things at the forefront of the American mind as we approach our country's 250th anniversary in a couple of days. While there are many reasons to be excited about this Fourth of July's celebration, the icing on the cake for employers and plan administrators is the welcome news that most "Trump Accounts" are not subject to ERISA.

Last year, on July 4, 2025, President Trump signed the One Big Beautiful Bill Act into law. While there were only a couple of provisions that affected employee benefits (summarized here), one notable change was that taxpayers can now establish tax-advantaged Trump Accounts for children under the age of 18. During the period that ends before January 1 of the calendar year in which the account beneficiary attains 18 (the growth period), employers can contribute up to $2,500 in excludable annual contributions to the Trump Accounts of their employees' dependents. One of the lingering questions about Trump Accounts was whether they would be subject to ERISA.

The U.S. Department of Labor (DOL) recently released guidance which clarifies that most Trump Accounts will avoid ERISA's oversight. In reaching this conclusion, the DOL reasoned that Trump Accounts do not constitute "employee pension benefit plans" within the meaning of Section 3(2) of ERISA. Because Trump Accounts generally provide benefits for dependents of employees rather than the employees themselves, they do not fit into the definition of a pension plan. This conclusion brings welcome relief for employers considering Trump Account contributions.

Narrow Exceptions to the Rule and the Available Safe Harbors

There are, however, a few exceptions of which employers should be aware. The first exception applies if the eligible individual on whose behalf the contribution is made is actually an employee – and not a dependent of an employee – during the growth period, such as employees aged 16 or 17. In those limited circumstances, the DOL conceded that ERISA might apply. Nevertheless, because employers have no meaningful role in the operation of the Trump Accounts, the DOL concluded that employer contributions to Trump Accounts during the growth period do not give rise to an ERISA-covered plan as long as participation is completely voluntary for employees, and the employer does not:

1. Impose conditions on utilization of Trump Account funds beyond those permitted under the Code;
2. Make or influence the investment decisions with respect to funds contributed to a Trump Account;
3. Represent that the Trump Accounts or Trump Account contribution program are an employee pension benefit plan or an employee welfare benefit plan established or maintained by the employer; or
4. Receive any payment or compensation in connection with a Trump Account.

The second exception applies when an employer makes available its post-tax payroll deduction IRA program to employees who established their own Trump Accounts. In these situations, the payroll deduction IRA safe harbor will apply so long as these four conditions are met:

1. There are no employer contributions;
2. Employee participation is voluntary;
3. The employer does not endorse the program; and
4. The employer receives no consideration in connection with the program, other than reasonable compensation for administrative services actually rendered in connection with payroll deductions.

The DOL emphasized that the safe harbor regulations are available even if the conditions were not previously met for employer and employee pre-tax contributions during the growth period. The DOL's emphasis on employer neutrality

and the absence of employer endorsement of the program is worth noting. Employer neutrality is the basis of the safe harbor's rationale for not treating programs like Trump Accounts as an employee benefit plan under ERISA.

Next Steps for Employers

With the issuance of Technical Release 2026-02, the DOL is attempting to make Trump Accounts as employer friendly as possible. Still, employers should verify that they qualify for the safe harbor exemptions in the very limited circumstances in which ERISA might still apply.

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