

DOL Issues Final Rule on Association Retirement Plans

On July 29, 2019, the Department of Labor (DOL) issued a final rule to facilitate and expand the availability of multiple employer defined contribution plans (MEPs). The final rule provides clarity regarding the types of “bona fide” groups or associations of employers as well as professional employer organizations (PEOs) that are permitted to sponsor retirement plans.

With respect to PEOs, the final rule does two things.

First, it defines a PEO and establishes that a “bona fide” PEO is capable of establishing a MEP. The rule then sets the requirements for a “bona fide” PEO, which are:

- Performing substantial employment functions on behalf of its client employers that adopt the MEP;
- Having substantial control over the functions and activities of the MEP (plan sponsor; plan administrator; named fiduciary) and continues to have employee-benefit-plan obligations to MEP participants after the client employer no longer contracts with the organization.
- Ensuring that each client employer that adopts the MEP acts directly as an employer of at least one employee who is a participant covered under the MEP; and,
- Ensuring that participation in the MEP is available only to employees and former employees of the PEO and client employers, employees and former employees of former client employers who became participants during the contract period between the PEO and former client employers, and their beneficiaries.

The rule then creates a safe harbor criteria for determining whether a PEO that sponsors a MEP is performing essential employment functions. A PEO shall be considered to perform substantial employment functions on behalf of its client-employers that adopt the MEP if it meets the following criteria with respect to each client-employer employee that participates in the MEP:

- Assumes responsibility for and pays wages to employees of its client employers that adopt the MEP, without regard to the receipt or adequacy of payment;
- Assumes responsibility for and reports, withholds, and pays any applicable federal employment taxes for its client employers that adopt the MEP, without regard to the receipt or adequacy of payment;
- Plays a definite and contractually specified role in recruiting, hiring, and firing workers of its client-employers that adopt the MEP. A PEO satisfies this requirement if it recruits, hires, and fires, assumes responsibility for recruiting, hiring, and firing, or retains the right to recruit, hire, and fire workers of its client-employers that adopt the MEP; and,
- Assumes responsibility for and has substantial control over the functions and activities of any employee benefits which the service contract may require the PEO to provide, without regard to the receipt or adequacy of payment from those client employers for such benefits.