

DOL Releases ERISA Enforcement Results for 2023

The U.S. Department of Labor (DOL) has released the results of its Employee Benefits Security Administration's (EBSA) [enforcement actions](#) during fiscal year (FY) 2023.

The DOL has broad authority to investigate or audit an employee benefit plan's compliance with ERISA. EBSA handles audits of employee benefit plans for the DOL. To perform these audits, EBSA employs investigators working out of field offices, many of whom are lawyers or certified public accountants or who have advanced degrees in business or finance.

Through its enforcement of ERISA, EBSA oversees approximately 2.8 million health plans, 765,000 pension plans, and 619,000 other welfare benefit plans. According to the audit, these plans cover 153 million workers, retirees and dependents.

In FY 2023, EBSA recovered over **1.4 billion dollars** for plans, participants and beneficiaries. Other key EBSA enforcement results include the following:

- EBSA closed 731 civil investigations. Of these, 69% resulted in monetary results for plans or other corrective actions.
- EBSA referred 50 cases for civil litigation and closed 196 criminal investigations.
- EBSA's criminal investigations led to the indictment of 60 individuals—including plan officials, corporate officers and service providers—for offenses related to employee benefit plans.

EBSA has a dedicated [enforcement webpage](#) that outlines ERISA's civil violations and criminal provisions, as well as enforcement accomplishments and national enforcement priorities and projects.

IRS Reminder: Health FSAs, HRAs and HSAs Cannot Pay for Personal Health and Wellness Expenses

The IRS has issued a [bulletin](#) to remind taxpayers that tax-advantaged medical savings accounts, such as health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs), cannot pay for personal expenses for general health and wellness. Similarly, health savings accounts (HSAs) cannot be used to pay for these expenses on a tax-free basis. The IRS is concerned that taxpayers are being misled by companies that misrepresent when personal expenses can be reimbursed by these accounts.

Health FSAs, HRAs and HSAs can only be used to pay for qualified medical expenses on a tax-advantaged basis. Expenses that are merely beneficial to general health are not qualified medical expenses. The IRS maintains a set of [FAQs](#) addressing when

costs related to nutrition, wellness and general health are qualified medical expenses. These FAQs clarify that these costs are qualified medical expenses only in very limited circumstances.

Therefore, the IRS cautions taxpayers to beware of companies misrepresenting nutrition, wellness and general health expenses as qualified medical expenses. According to the IRS, some companies mistakenly claim that notes from doctors based merely on self-reported health information can convert nonmedical food, wellness and exercise expenses into qualified medical expenses.

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