

Client Alert

DOL Issues Rule Allowing More Unaffiliated Employers to Participate in Association Retirement Plans

August 2, 2019 – On July 29, 2019, the U.S. Department of Labor (“DOL”) issued the final version of its “association retirement plan” rule (found [here](#)). The final rule makes it easier for qualifying associations of unaffiliated employers and certain “working owners” (described below) to participate in a single defined contribution plan (such as a 401(k) or profit sharing plan) sponsored by the association or by a professional employer organization (“PEO”). Such plans are known as multiple employer plans (“MEPs”).

The DOL’s final rule clarifies and generally relaxes the requirements for participation in MEPs by unaffiliated employers (including working owners) that share a sufficient common nexus. Under the rule, an association of employers must satisfy *all* of the following criteria for its members to participate in a MEP:

- The association must have at least one substantial business purpose (unrelated to providing MEP coverage to its members). A substantial business purpose is presumed to exist if the association would be a viable entity in the absence of the MEP.
- Each employer participating in the MEP must have at least one employee covered under the MEP.
- The association must have a formal organizational structure with a governing body and bylaws.
- The functions and activities of the association must be controlled by its employer members, and the MEP must be controlled by the participating employers both in form and in substance.
- The association members must have a commonality of interest, such as being in the same trade, industry, line of business or profession, or having their principal places of business in the same state or metropolitan area.
- MEP participation must be limited to association members.
- The association must not be (or be affiliated with) a bank, trust company, insurance issuer, broker-dealer, or other financial services firm (including a recordkeeper or third-party administrator), unless it participates in the association as a qualifying employer member.

The rule also provides that a PEO may sponsor a MEP for its client employers, provided the PEO satisfies certain specified criteria, which are generally intended to demonstrate the PEO’s bona fide status.

Finally, the rule permits “working owners” (generally, self-employed business owners) without employees to participate in a MEP sponsored by a qualifying employer association.

The rule does not address “open MEPs” (which are plans of unaffiliated employers with no relationship other than their joint participation in the MEP), despite significant recent legislative activity and interest in this subject. Instead, the DOL acknowledged that open MEPs deserve further consideration and solicited public comments, to be considered in possible future rulemaking.

For questions about MEPs and all other employee benefit plans, please contact [Alec Nealon](#) or [Brian Snarr](#).

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