



News & Types: Employment, Labor & Benefits Update

A Beneficiary Form is the Most Important Employee Benefit Form

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The most important form in all of employee benefits is an individual employee's life insurance and/or 401(k) plan beneficiary form(s). In the absence of a valid beneficiary form on file with the plan administrator, the life insurance and 401(k) plan documents will often control the distribution of plan proceeds upon an employee's death. Unfortunately, the varied distribution protocols outlined in different life insurance and 401(k) plan provider documents are often contrary to what one might expect would be the distribution protocol, possibly resulting in my being required to advise a plan to pay the proceeds to an unintended individual (e.g., a former spouse) or to the deceased employee's estate. In other words, the distribution of large sums of money could potentially be against the deceased employee's wishes. The best way to avoid this issue is to make sure that an individual employee's life insurance and 401(k) beneficiary form(s) exist, is current, and matches any estate planning documents.

Below are two very common scenarios with possible unintended beneficiaries:

1. **401(k) Plan:** An employee divorces and names an adult child his/her new beneficiary. The employee later remarries and dies without updating his/her beneficiary form. By application of law, the new spouse is automatically the beneficiary of the employee's 401(k) account balance. In order for the adult child to retain any right to some or all of the 401(k) plan account balance, the employee would have needed to complete a new beneficiary form (post-marriage) and his/her new spouse needed to consent to a partial or complete transfer of the account balance to the adult child or any other desired beneficiary (trust, college, etc.). An employee's spouse is always the employee's sole beneficiary unless the spouse consents to naming another individual or entity as the beneficiary. This consent must be given in writing and filed according to the procedures set forth in the plan documents.
2. **Estate Planning:** An employee engages a lawyer who prepares a will, trust, and healthcare power of attorney. The will and the trust documents clearly name the trust as the beneficiary of the life insurance and 401(k) plan proceeds. The employee never updates the beneficiary form(s) on file with the life insurance plan or the 401(k) plan. The employee later dies. Although the will and trust documents describe the trust as being the beneficiary of the life insurance proceeds and the 401(k) account balance, the beneficiary forms on file with the individual plans will govern all distributions upon an employee's death. If there are no valid beneficiary forms on file, the plan document(s) will provide for the proper distribution of plan proceeds. Although the deceased employee's family will often argue that

the deceased employee's will and estate planning documents are the clearest expressions of the deceased employee's intent and that the plan(s) should follow the deceased employee's intent, the will and/or trust documents do not override the beneficiary form(s) on file with the life insurance plan or 401(k) plan and/or the actual plan document(s). As a result, when engaging in estate planning activities, be sure to update all beneficiary forms to ensure that they match the will and trust documents.

To avoid claim disputes and potential litigation, we recommend that all beneficiary forms be reviewed and updated at least annually and after all change of life events (birth, marriage, divorce, death of a beneficiary, etc.). The best way for an employee to express his/her wishes is to ensure that an updated beneficiary form is on file with all employer-sponsored (and individual) life insurance plans and the 401(k) plan if any other individual or entity other than the employee's spouse is the intended beneficiary.

Please contact Frank Del Barto or your relationship attorney with any questions.