



OPINION 80-38A
3(1)
201(1)
301(a)(1)

JUN 27, 1980

Mr. James N. Schuth
Miles & Stockbridge
10 Light Street
Baltimore, Maryland 21202

Dear Mr. Schuth:

This is in reply to your letter of September 28, 1979, requesting an advisory opinion regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the Black & Decker Disability Plan and Trust (the Plan). Specifically, you ask the following questions: (1) whether the Plan is an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA; (2) whether the Plan is an "employee benefit plan" within the meaning of ERISA section 3(3); (3) whether the Plan is an "employee benefit plan" as provided in ERISA section 514(b)(2)(B); (4) whether the Plan is exempt from the participation and vesting requirements of part 2 of title I of ERISA as an "employee welfare benefit plan" within the meaning of ERISA section 201(1); (5) whether the Plan is exempt from the funding requirements of part 3 of title I of ERISA as an "employee welfare benefit plan" as defined in ERISA section 301(a)(1); and (6) whether the Plan is exempt from title IV of ERISA.

You state that the Plan is provided to employees of Black & Decker (U.S.) Inc., The Black and Decker Manufacturing Company, and Black & Decker, Inc. (collectively hereinafter called the Employer). The Plan provides a pre-established disability benefit of 60 percent of employees' base pay to employees who are determined to be disabled. The disability benefit will terminate when the employee either: (1) retires under the employer's retirement plan; (2) dies; (3) recovers;¹ or (4) fails to apply for other disability benefits such as Social Security. The Plan came into existence on October 1, 1979, and is a continuation of a similar plan which was insured by the Travelers Insurance Company. Funding for the Plan is provided by a trust fund with Union Trust Company of Maryland. Part of the cost of the plan is borne by the employees and the remainder by employer contributions which are actuarially determined. Travelers Insurance Company also provides administrative services to the Plan.

The term "employee welfare benefit plan" is defined in section 3(1) of ERISA as:

...any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) ... benefits in the event of sickness, accident, disability, death or unemployment, ..., or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Since the Plan has been established by the Employer for the purpose of providing disability benefits to employees, and since disability benefits are among the benefits described in ERISA section 3(1), the Plan is an employee welfare benefit plan within the meaning of ERISA section 3(1).

¹ In addition to the circumstances described in your letter which result in a termination of disability benefits, the copy of the Plan furnished with your letter indicates that disability benefits cease at a specified age if none of the other circumstances occurs.

Section 3(3) of ERISA defines the term “employee benefit plan” as “... an employee welfare benefit plan or an employee pension benefit plan or a plan which is both...” Since, as we have concluded, the Plan is an employee welfare benefit plan, it is an employee benefit plan within the meaning of section 3(3) of ERISA. The definition of “employee benefit plan” in section 3(3) of ERISA governs that term throughout title I of ERISA, including section 514, relating to the effect of title I on other laws. Since the Plan is an employee benefit plan within the meaning of ERISA section 3(3), therefore, it is an employee benefit plan as that term is used in section 514(b)(2)(B).

Moreover, the definition of “employee welfare benefit plan” in section 3(1) governs that term throughout title I of ERISA in its entirety, including sections 201(1) and 301(a)(1). Those sections set forth exemptions of employee welfare benefit plans from part 2 of title I, relating to participation and vesting, and from part 3 of title I, relating to funding, respectively. Since the Plan is an “employee welfare benefit plan” within the meaning of section 3(1), it is, therefore, exempt from parts 2 and 3 of title I of ERISA under sections 201(1) and 301(a)(1), respectively.

The Department does not issue advisory opinions with regard to title IV which is under the general administration of the Pension Benefit Guaranty Corporation (PBGC). You should get in touch with the PBGC with regard to any questions you have pertaining to that title. This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs