

Discounted Premiums May Render Individual Policies Governed by ERISA

By [Mike Reilly](#) on March 1st, 2012

What converts an individual policy to an ERISA Plan? Discounted premiums can render the policy a plan under ERISA.

What if the employee reimburses the employer for the premiums? This is an interest free loan and may be “sufficient employer contribution” to render the policy governed by ERISA.

There are a number of issues that need to be addressed to determine whether an individual policy constitutes an ERISA plan.

Here's the case of [Boles v. UNUM Life Insurance Co. of America \[pdf\]](#), __ F.Supp. 2d __, 2012 WL 204297 (D. Neb. January 24, 2012) (Employee reimbursed employer the discounted premiums for the employee's individual policy. The Court held the employer was essentially providing an interest free loan to the employee which amounted to “sufficient” employer contribution to render the policy governed by ERISA.)

This case highlights key issues to address in making that determination.

FACTS: Boles acquired an individual disability policy while a part-owner of a restaurant. In his Policy application he stated that the employer would pay the premium. The employer paid the premium but Boles reimbursed the employer for at least part of the amount paid. In this way Boles paid a discounted premium for the individual policy, receiving the group premium rate through a special billing method offered, known as “FLEX-BILL.” Two other non-owner employees also received individual policies with discounted group FLEX-BILL rates.

ISSUE: Is the claim under the individual policy governed by ERISA?

TRIAL COURT HELD: Individual policy governed by ERISA.

1. Whether the insurance policy is a “plan” within the meaning of ERISA is a mixed question of law and fact.
2. ERISA plans that cover a working owner or partner **and** at least one non-owner are considered ERISA plans. Op. at 4.
3. Because the employer (a) used a FLEX BILL option to provide several non-owners with individual disability policies, (b) processed paperwork for these policies, and (c) and paid premiums, the plan embodied a set of administrative practices. Op. at 4.
4. Even if Boles reimbursed the employer for premium payments, the employer advanced payment of the premiums. This constituted an interest free loan to the employee and is, therefore, “*sufficient to be considered an employer contribution to the plan.*” Op. at 5.