

The background features a gradient from dark brown on the left to deep blue on the right. Overlaid on this are several diagonal stripes and a pattern of semi-transparent, upward-pointing arrows of varying sizes and colors (grey, white, and blue).

# Health Promotion Program Legal Updates

December 14, 2022

# How ERISA Fiduciary Duty can Improve Workplace Wellness Programs

By Barbara J. Zabawa, JD, MPH  
Center for Health and Wellness Law, LLC

# Reminder

This session will be available to view again starting Wednesday, December 21.

Log-in to [welcoa.org](http://welcoa.org) with your member username and password. Visit the “Legal & Compliance Issues” section under Member Resources.

# CEU Credits

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# Legal Help Desk

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# Agenda

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- ERISA
- Fiduciary Duty and Workplace Wellness
- Getting at Root Causes of Poor Health and Wellness
  - Wellness-Legal Partnerships (WLPs)
- Q&A



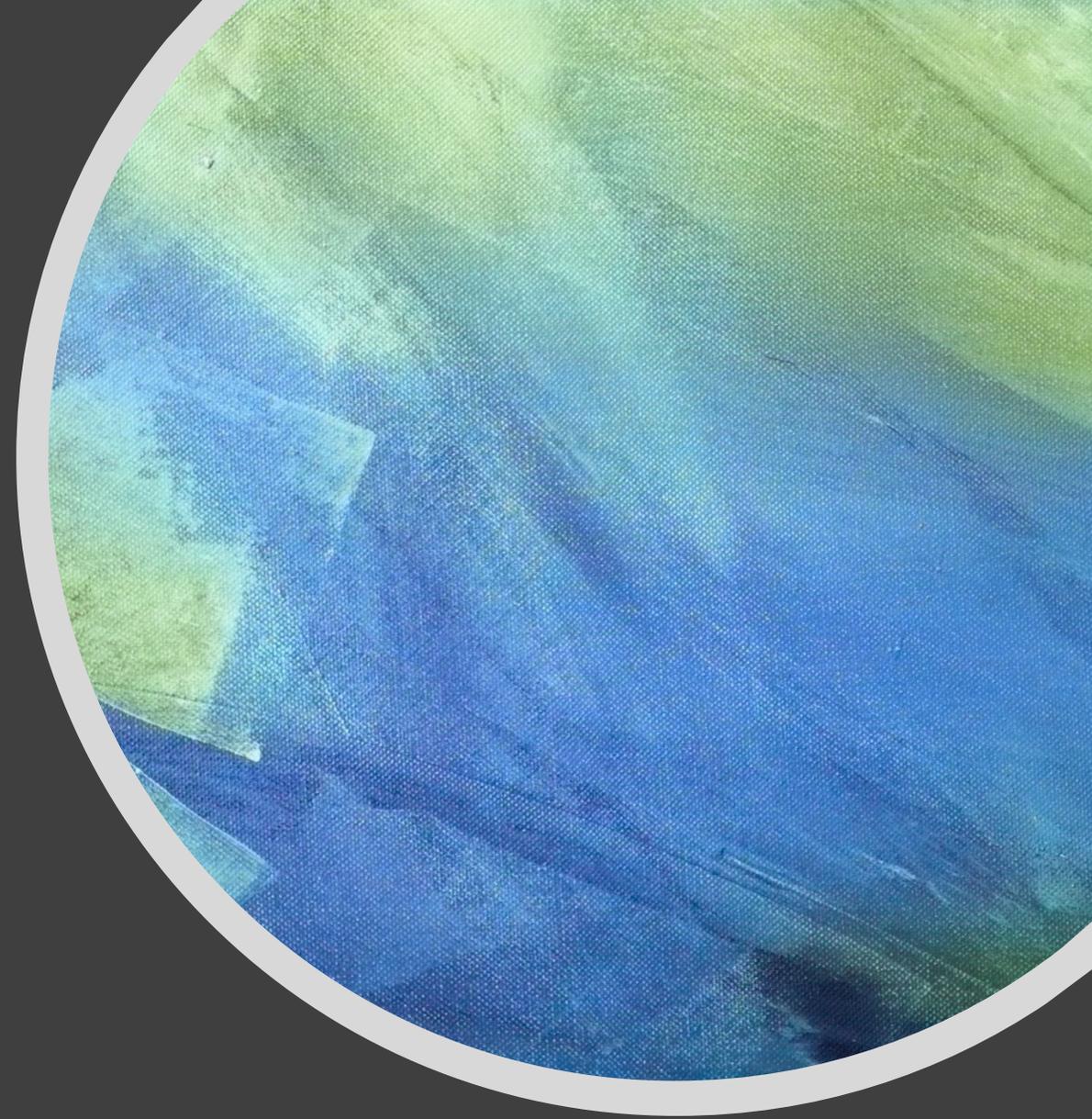
# ERISA

Federal law

Applies to private,  
for-profit employers

Sets standards of  
conduct for managers  
of employee benefit  
plans/assets

Group health plans =  
welfare benefit plans



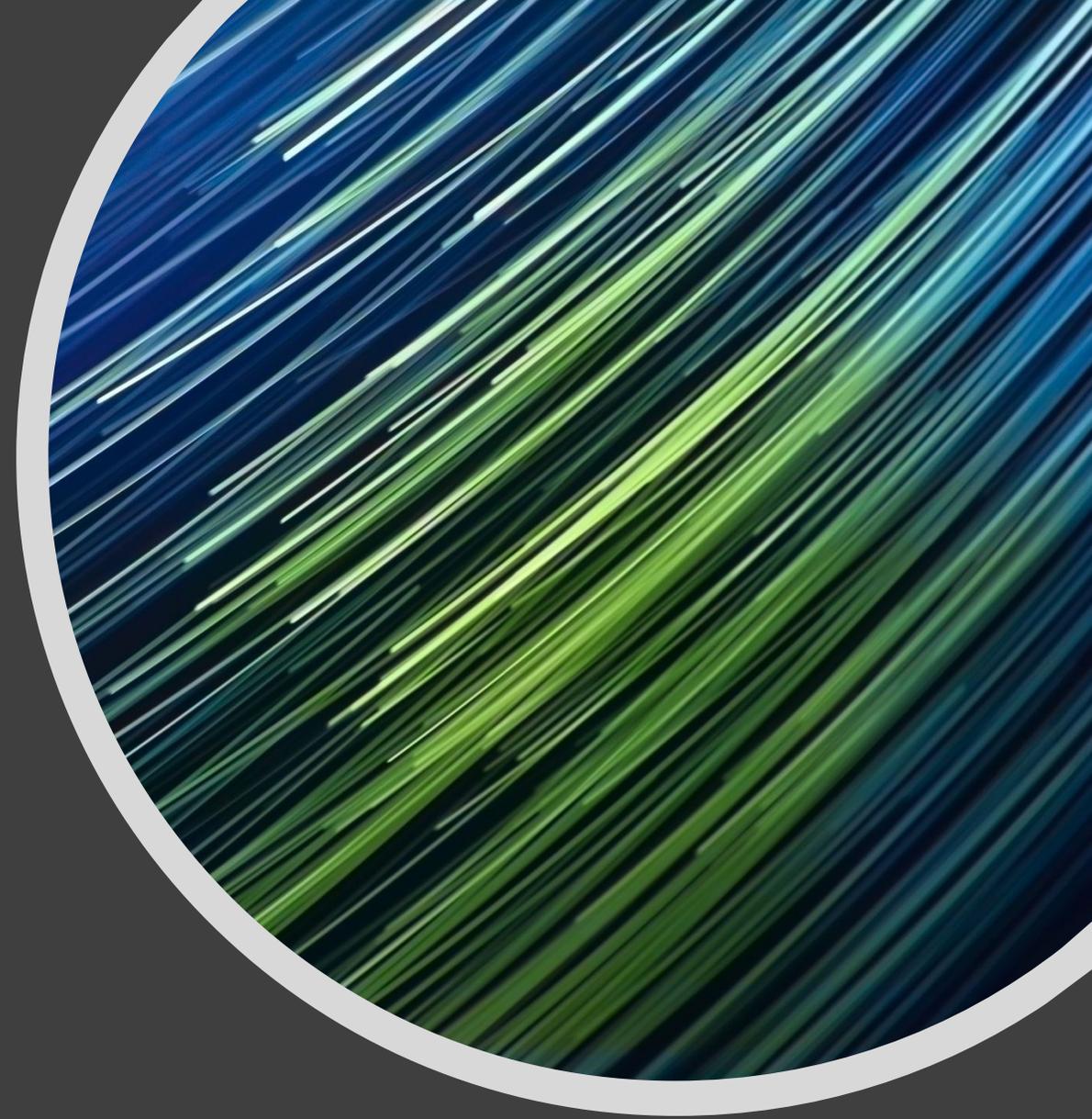
# ERISA

## Fiduciaries

- People who use discretion in administering and managing employee benefit plans
- Plans must have at least one fiduciary
  - Must be named in plan document

## Fiduciary activities are not:

- Establishing a plan
- Determining benefit package
- Amending a plan
- Terminating a plan



# ERISA

- Fiduciaries must act solely in interest of plan participants/beneficiaries.
  - Prudence
  - Follow plan documents
  - Hold assets in trust
  - Pay only reasonable plan expenses



# ERISA

- Case example:
  - Hughes vs. Northwestern University
  - SCOTUS vacated 7<sup>th</sup> Circuit ruling on 1/24/22
  - NW employees sued retirement plan for breaching fiduciary duty by:
    - Failing to monitor and control fees paid for recordkeeping – ultimately resulting in higher costs to plan participants
    - Offering retirement products that carried higher fees than those of other similar products; and
    - Presenting a large number of investment options, causing participant confusion and poor investment decisions.
  - SCOTUS stated “a plan fiduciary is responsible for monitoring all plan investments and removing any imprudent ones.

# Fiduciary Duty and Workplace Wellness

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- Wellness programs that are “group health plans” are subject to ERISA fiduciary duty
  - Increased cost-sharing by employees increases the need for employers to purchase high-value health plans.
  - Wellness programs can either help or hinder the value of a health plan.
  - Help:
    - Meet specific needs of workplace that tackle root causes of poor well-being
    - Professionals who deliver wellness services must be qualified/reasonable in cost

# Addressing Root Causes of Poor Wellbeing

- Social Determinants of Health (SDOH)
  - Family disruption
  - Poor housing
  - Poverty
  - Discrimination
  - Domestic violence
  - Lack of health care access
  - Immigration problems

# Wellness-Legal Partnerships (WLPs)

- Modeled after Medical-Legal Partnerships (MLPs)
  - Serve broad or targeted populations
  - Have a multi-disciplinary, holistic and preventive approach
  - Integrate legal services into health care delivery model
  - Address the root cause of poor health

# Medical-Legal Partnerships (MLPs)

MLPs typically have three-fold approach to addressing health inequities:

## 1. Direct Legal Representation

- Medical professionals refer patients who have legal needs to MLP. Lawyers work to resolve legal issues such as:
- Family disruption
- Poor housing
- Unemployment/poverty
- Domestic violence
- Lack of health care access
- Immigration problems

Transformations in Health Law Practice, at 204.

# Medical-Legal Partnerships (MLPs)

## 2. Changes to Clinical/Institutional Policy

- Ensuring patient needs are met, using concepts of consent and contract
- Addressing health care disparities
- Incorporating MLPs into Community Health Needs Assessment and other ACA requirements

## 3. Systemic Policy Changes

- Advocating for laws and policies that advance value-based care

# Employee Assistance Programs (EAPs)

- According to [SHRM](#), an EAP is a:
- “[W}ork-based intervention program designed to identify and assist employees in resolving personal problems that may be adversely affecting their performance at work, such as marital, financial or emotional problems; family issues; or substance or alcohol misuse. EAPs may also offer a wide array of services covering basic legal assistance and referrals, adoption assistance, help finding elder care services, wellness programs, and more.”



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# Q&A

The following Q&A session does NOT constitute legal advice and should not be used as such. It is for educational purposes only.

WELCOA Members should retain legal counsel to obtain definitive answers.

# Questions?

- For more information, contact:
  - Barbara J. Zabawa, JD, MPH
  - The Center for Health and Wellness Law, LLC
  - Phone: 608-579-1267
  - Email: [bzabawa@wellnesslaw.com](mailto:bzabawa@wellnesslaw.com)
  - Website: [www.wellnesslaw.com](http://www.wellnesslaw.com)
  - Twitter: @wellnessatty
  - LinkedIn: [www.linkedin.com/in/barbarazabawa](http://www.linkedin.com/in/barbarazabawa)
  - Instagram: wellnessattorney
  - Facebook: @centerforhealthandwellnesslaw



# ERISA

- Enforced by:
  - DOL
  - IRS
  - PBGC
- Penalties for breach of fiduciary duty:
  - 20% of the amount paid to the plan that represents losses incurred by the plan, disgorged profits, and amounts necessary to achieve correction of the ERISA violation. ERISA § 502(I).
  - Removal from fiduciary position