

**PRIVILEGED AND CONFIDENTIAL**

July 9, 2020

TO: Dr. John Zabasky  
FROM: Groom Law Group  
RE: WorXsite HR MECPC Template Plan – ERISA Status of Plan

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You have asked for our opinion on the whether the WorXsiteHR MECPC Template Plan (“Template Plan”) would be an employee welfare benefit plan subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). As detailed below, we have concluded that (a) the Template Plan, if adopted as drafted (and with revisions that we have previously provided you), would be an employee welfare benefit plan subject to ERISA; and (b) the Template Plan, if adopted as drafted (and with the revisions that we have previously provided you), would comply with the content requirements for an ERISA-governed welfare-plan document.

Groom’s review was based solely on the documents provided by WorXsiteHR. Groom’s analysis and conclusions may change if different documents are provided or utilized. The conclusions expressed in this memorandum are based on ERISA, as well as regulations and sub-regulatory guidance interpreting the statutory requirements through the date hereof, which are subject to change. For certain provisions, statutory, regulatory, and sub-regulatory guidance is not entirely clear, and there are no (or few) court decisions or agency rulings directly on-point. Because there may be little or no case law or interpretive rulings directly on point on the issues addressed in this opinion, a court or regulator could reach conclusions different from those contained in this report. In addition, future legislative, judicial, regulatory, and administrative developments may affect the legal analysis and conclusions contained herein. This opinion letter is provided by Groom Law Group, Chartered for the use and reliance by WorXsiteHR. It should not be construed as legal advice to any other party, and may not be relied upon by any other party.

Our analysis follows.

## **I. Facts**

WorXsiteHR is a licensed third party administrator (“TPA”) in California and licensed health insurance broker in approximately 25 to 30 states. It provides benefits administration, enrollment, ACA compliance and reporting, HRIS, applicant tracking, time and attendance and payroll services. With respect to health benefit plans, it currently administers both insured and self-funded medical and welfare plans.

Among the services WorXsiteHR provides is designing plan benefits, including via the Template Plan. Employers that use the Template Plan would formally adopt the plan via appropriate corporate action (i.e., corporate action that is sufficient under applicable state law to bind the corporation to a contract), and such employers are considered to be the plan sponsor of the applicable plan, with the benefits and applicable terms of such plan following the Template Plan document. Once adopted, WorXsiteHR will, as TPA, administer such plan for the adopting employer.

For purposes of this review, Groom focused on WorXsiteHR's Template Plan document for the MECPC template plan for self-funded employers. In addition to administering the MECPC plan for employers, WorXsiteHR provides related template plan documents (including a summary plan description ("SPD") and a summary of benefits and coverage). We have also reviewed these documents as part of the analysis below.

## **II. Legal Requirements**

Under ERISA section 3(1), an ERISA-governed "employee welfare benefit plan" exists where there is

any plan, fund, or program which 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 purposes of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services.

Notwithstanding the foregoing, a welfare benefit plan sponsored by a church or a governmental entity is not subject to ERISA. *See* ERISA section 4(b)(1) and (2).

An ERISA welfare benefit plan may be funded through insurance, or may be "self funded." *See, e.g.*, ERISA section 403. An insured ERISA welfare benefit plan is a plan wherein a plan sponsor purchases a contract of insurance, and the insurer offering such contract of insurance is thereafter responsible for the payment of benefits (in accordance with, and the extent provided by, the contract of insurance). A self-funded ERISA welfare benefit plan is a plan wherein the plan sponsor bears responsibility for payment of claims (with such payments generally occurring through a trust or a claims account).

ERISA section 402 requires that every welfare plan (which includes group health plans) "be established and maintained pursuant to a written instrument." ERISA also

requires most employee welfare benefit plans (including group health plans) to have an SPD. ERISA does not require a particular format for an SPD, but there is specific information that must be included in a SPD (to the extent that the information is applicable). The SPD must also be understandable, must not be misleading, and it must clearly describe certain limits, exceptions and restrictions on benefits available under the plan. Under ERISA Title I, plans are required to contain certain provisions and benefits (a comprehensive list of such benefits is beyond the scope of this memorandum).

### **III. Analysis**

Initially, we note that our analysis assumes that the Template Plan (as well as other plan-related documents, such as the SPD) are adopted in the form provided by WorXsiteHR, without any material amendments or changes by the adopting employer. To the extent that the adopting employer makes a material modification to the Template Plan or to plan-related documents, such changes could impact the conclusions below. Hence, the conclusions below might change where materials changes have been made, either at adoption or at any point thereafter, to the Template Plan or to plan-related documents, and independent legal advice should be sought in the event of such changes.

Because the Template Plan is providing for “medical, surgical, or hospital care or benefits,” it meets the definition of an ERISA welfare benefit plan under Section 3(1) of ERISA. Hence, unless the Template Plan is adopted by a church or governmental entity, it will, upon adoption, be governed by ERISA. (The question of what constitutes a church or governmental entity under ERISA is beyond the scope of this memorandum, but we would be happy to provide additional information on this topic, at your request.)

In addition, we have reviewed the terms of the Template Plan (and the related SPD for the Template Plan document), and, in our opinion, these documents meet the content requirements under Title I of ERISA. Note that a plan may meet ERISA requirements as written but still present compliance concerns in operation, and hence our conclusion is limited to the terms of the Template Plan (and related SPD) as written.