

## COMPLIANCE

# Lesson learned: Put it in writing

by Tom Shaevsky, General Counsel



Tom Shaevsky is general counsel at BeneSys Inc. He has spent more than 25 years practicing ERISA/employee benefits law.

A case decided earlier this year by the U.S. Court of Appeals for the 7th Circuit serves as a cautionary note to multiemployer pension plan sponsors that withdrawal liability assessments against withdrawing employers are not always successful.

In the case of *Bulk Transport Corp. v. Teamsters Union No. 142 Pension Fund and its Trustees* (decided March 22, 2024), the 7th Circuit rejected the concept of “adoption by conduct.” It held that the written terms of pension contributions to multiemployer plans cannot be changed orally — and that any revised terms must be placed into a signed written amendment.

The facts in the case are detailed, but in essence, the court held that although it has been long understood that the parties to a collective bargaining agreement may change most terms by conduct (i.e., without a signed amendment), by contrast, the precise terms of pension contributions contained in an ERISA (Employee Retirement Income Security Act) multiemployer pension plan document can only be changed in writing. Hence, it is prudent for the written provi-



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sions of an ERISA plan document to be updated so they are consistent with operational practice and the understanding of the boards of trustees and participating employers.

For many years, Bulk Transport was a party to collective bargaining agreements with Teamsters Local 142. In 2004 Bulk Transport obtained a contract to haul commodities, a type of work that prior to 2004 had been covered by one of the collective bargaining agreements but had been excluded from that agreement

beginning in 2003. Despite the fact that the collective bargaining agreement — by its explicit wording — no longer covered haul commodities work, the union insisted that the employer apply the agreement’s provisions to this type of work. Bulk Transport capitulated and applied the wage rates and pension terms of the collective bargaining agreement to those employees who engaged in the haul commodities work.

However, one year later, Bulk Transport lost the haul commodities work and stopped



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making pension contributions on behalf of its employees who had engaged in that work. The pension fund then assessed \$2 million in withdrawal liability under ERISA. Bulk Transport disputed the assessment but paid it, and then demanded arbitration under ERISA. The arbitrator concluded that Bulk Transport had adopted the collective bargaining agreement for the group of haul commodities employees “by conduct” — which meant (according to the arbitrator) that the pension fund was entitled to its claimed assessment. The U.S. district court agreed with the arbitrator’s decision.

On appeal, the 7th Circuit reversed the arbitrator’s and district court’s decisions. Citing sections of ERISA and the Taft-Hartley Act, the court noted that pension provisions of both collective bargaining

agreements and pension plan documents must be in writing. The 7th Circuit then drew a contrast between general labor law concepts and pension plan concepts in particular.

Under labor law generally, “the parties to a collective bargaining agreement may change most terms by conduct.... But the terms of pension contributions to multi-employer plans cannot be changed orally. The precise terms must be in writing — and, having been reduced to writing, must be enforced without any consideration of equitable arguments.”

The court emphasized that “multi-employer pension plans are not privy to oral side deals between employers and unions. For multi-employer plans, enforcing the writings is vital.”

In conclusion, the 7th Circuit stated: “We hold that the writings control, whether the employer and union orally

agree to contribute for more workers than required or for fewer.”

The overall lesson of the *Bulk Transport* case is this: Operational practice and verbal understandings between unions and participating employers — particularly concepts of employee eligibility and employer contribution obligations — should be placed in writing in ERISA pension plan documents. Further, changes to terms of collective bargaining agreements that may impact pension plans or any type of ERISA benefits — whether these changes are written changes to collective bargaining agreements, changes based on verbal “side deals” by the union and employer, or “conduct” changes by a union or employer — should promptly be reflected in writing in ERISA pension plan documents and other types of ERISA plan documents. •

This article is provided for informational purposes only and does not constitute legal advice. Readers should consult with their own legal counsel before acting on any of the information presented.

## ABOUT BENESYS

**BeneSys has been providing Taft-Hartley trust fund administration and IT services since 1979.** Our dedicated specialists understand the nuances of Taft-Hartley benefit plans, and our software system, BenefitDriven, is designed to give our clients and their plan Participants the most efficient tools for self-administering trust fund accounts.

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# Vigilant employees are a vital defense against phishing attacks

by Jason Wolan, CIO

## New CIO brings cross-functional leadership and proud union ties

Jason Wolan joined the BeneSys team as CIO in the third quarter, bringing 23 years



of cross-functional technology experience. He has worked with and led teams

across infrastructure and security, business intelligence, analytics, and data services, as well as programming and development of proprietary platforms. He has led numerous transformations, from data warehouse initiatives to legacy and source system conversions to implementation of modern data reporting and delivery services. Jason has a family background of proud union members, including his father (IBEW — International Brotherhood of Electrical Workers), brother (IAFF — International Association of Fire Fighters), and wife (IATSE — International Alliance of Theatrical Stage Employees).

In today's digital landscape, phishing scams are more sophisticated and pervasive than ever before. Cybercriminals are no longer relying solely on poorly worded emails from fake princes promising vast fortunes. Instead, they've evolved, using highly targeted and convincing tactics that can deceive even the most tech-savvy individuals. As the threats grow, the responsibility for cybersecurity has shifted from just the IT department to every employee. BeneSys encourages our employees to stay diligent in the face of these daily threats — and you can do the same in your organization. We invite you to share the following important information with your teams.

### The evolution of phishing attacks

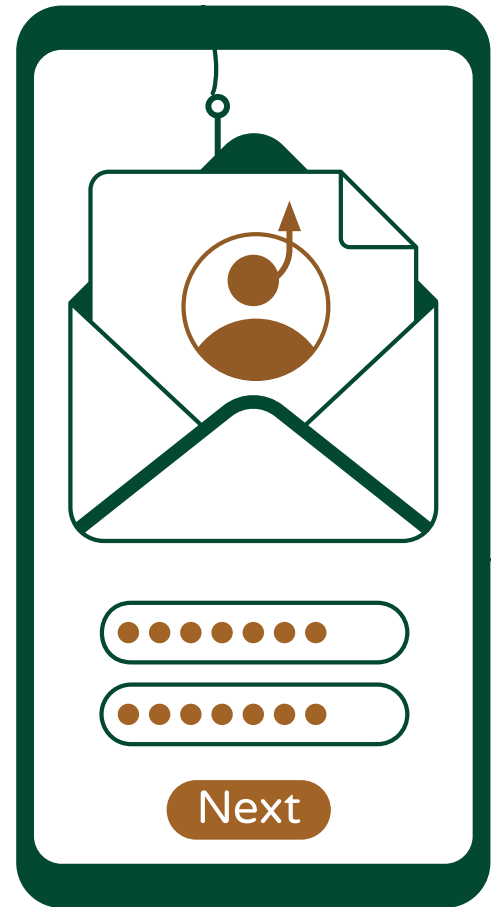
Phishing scams have come a long way from generic "Dear Sir/Madam" emails. Today, cybercriminals are using advanced techniques like:

- **Spear phishing.** These attacks are highly personalized, using publicly available information to craft emails that appear authentic and relevant to the victim.
- **Business email compromise.** Cybercriminals often impersonate executives or trusted vendors to establish legitimacy and then request wire transfers or sensitive data.
- **Multi-platform phishing.** Scams now occur not only through email but also via text messages (smishing), phone calls (vishing) and social media platforms.

These tactics are increasingly difficult to detect with technology alone, meaning employees are the last line of defense.

### Employee responsibility in cybersecurity

In the face of these evolving tactics, every employee has a personal responsibility to be vigilant. Phishing scams often exploit human error rather than technical vulnerabilities, making employee awareness and action critical to the



security of the organization. Here are some key responsibilities every employee should embrace:

- 1. Stay informed and up-to-date.** Cybercriminals are constantly innovating, so it's crucial for employees to stay informed about the latest phishing tactics. At BeneSys, we provide regular cybersecurity training sessions, but employee self-education is equally important. Encourage your teams to follow reputable cybersecurity blogs, attend webinars and stay updated on phishing trends. Awareness is your best defense.
- 2. Think before you click.** Phishing scams

A successful phishing attack can be devastating for any organization, leading to data breaches, financial losses and reputational damage.

often rely on urgency to trick recipients into acting without thinking. Always be cautious when receiving unexpected emails, especially those asking for sensitive information or financial transactions. Look for subtle signs like misspellings, unusual domain names or requests that seem out of character. *When in doubt, don't click.*

**3. Report suspicious activity immediately.**

If you suspect that you've received a phishing email or that your account may have been compromised, report it immediately to your IT or security team. Prompt reporting can prevent wider breaches. In today's interconnected work environment, acting quickly can protect not only yourself but the entire organization.

**4. Protect your credentials.**

Never share your login details with anyone — even colleagues. Phishing scams are often attempts to steal usernames and passwords. Always ensure you're using strong, unique passwords for different accounts and enable multifactor authentication (MFA) whenever possible. MFA provides an extra layer of protection, making it harder for attackers to access your accounts even if your password is compromised.

**The cost of complacency**

A successful phishing attack can be devastating for any organization, leading to data breaches, financial losses and reputational damage. Research shows that the average cost of a data breach is rising year over year, with phishing being a primary attack vector. Additionally, personal data stolen in phishing attacks can lead to identity theft, fraud and long-term consequences for employees.

Complacency is a cybercriminal's best friend. Many attacks are successful simply because an employee let their guard down for a moment, clicked on a link or responded to a fraudulent request.

**Final thoughts**

Phishing scams aren't going away anytime soon. As these attacks become more targeted and sophisticated, the role of every employee in safeguarding the organization's data becomes increasingly important. By staying informed, cautious and proactive, employees can become a vital defense against cyberattacks, keeping both company and personal information safe from cybercriminals. •

Recognizing exceptional BeneSys employees

**EMPLOYEE SPOTLIGHT: Sandy Taylor, claims manager**

**Who:** Sandy Taylor, claims manager in our Portland, Oregon, office.



**Why she stands out:**

"Sandy's extensive knowledge of claims and the TPA business after 33 years is invaluable," says Brenda Edington, claims manager. "She always has a positive can-do attitude, and her commitment to BeneSys, our clients and members is unquestionable."

**History at BeneSys:** Sandy began her TPA career as a receptionist at A&I Benefit Plan Administrators in October 1991. "I have been promoted to various positions in the claims department under both A&I

and BeneSys when we were acquired in 2015 — claims analyst, subrogation and appeal specialist, claims supervisor, assistant claims manager and claims manager."

**Highlights from her 33-year tenure:**

"We've definitely come a long way from my days in the production room dealing with paper files. Over the years I have worked on several claims conversions and countless implementations and helped to set up claims systems. I have participated in almost every area within the claims department, including specialty claims and MSR [member service representative]; I have processed all types of claims, such as disability, HRA, flex, etc.; and I have also trained claims analysts, MSRs and specialty claims analysts."

**Most rewarding part of the job:**

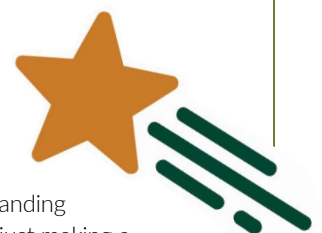
"Helping others, whether it's a member understanding their benefits or just making a co-worker's job easier. I also like finding process improvements to make the job more efficient."

**Career advice:**

"Welcome change and always continue learning. Be a critical thinker and think outside the box. I like to be a resource and provide support to others so they can be successful in the tasks they are performing."

**One favorite activity outside the office:**

"I love going to the beach or up to the mountains, which is why I love living in the Pacific Northwest." •



# We want to be the best. We count on you to tell us how

by Ed Wolyniec, CEO

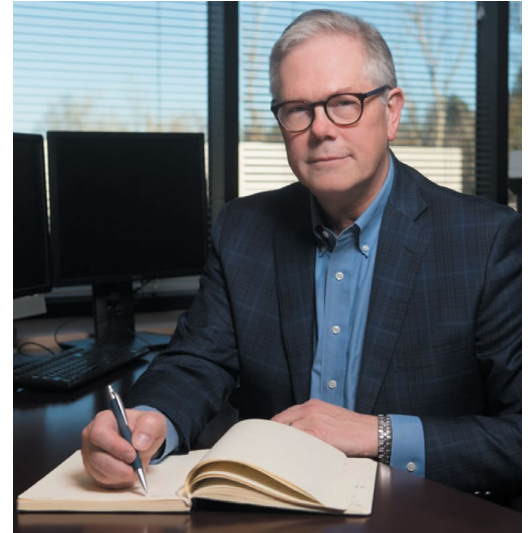
“Our annual client satisfaction survey provides critical input on where we need to improve.”

Someone mentioned to me that as you get older, time seems to go by more quickly. This thought popped into my mind as we were putting together this Q4 issue of the *BeneSys Navigator*. Q4? Wasn't it just the 4th of July?

The fourth quarter marks a very important event for the BeneSys team — our annual client satisfaction survey. Our goals are simple:

- Be the best TPA partner for trustees and members.
- Be the best TPA overall in the Taft-Hartley space.

The survey provides critical input on where we need to improve, where we have improved since last year's survey and a list of specific items that you want us to know about. The last item includes compliments for staff, fund-specific issues and anything else on trustees' minds. As always, I personally read every comment, as do



our plan management leaders — President Bonnie Maraia and Senior Vice Presidents Mary Weir and Lee Centrone.

Thank you in advance for your feedback. Hope your holiday season is safe, happy and restful — and that the time doesn't go by too quickly. •

## LEADERSHIP

### Meet Cip Apicelli, new VP of SaaS Solutions



**Cipriano Apicelli** is our new vice president of SaaS Solutions, overseeing the Beacon and BenefitDriven lines of business.

Cip joined Beacon Technologies Group, part of the BeneSys family of companies, in 2017 as a customer success manager. He most recently served as Beacon's vice president of operations, where he was instrumental in steering operations, spearheading strategic initiatives, and managing client and vendor relations. With the retirement of Beacon

co-founder and CEO Ernie Crawford this past summer, Cip was promoted to his new role.

As vice president overseeing software-as-a-service solutions, Cip is responsible for developing growth and support strategies for the SaaS division; fleshing out a dedicated, high-performing team; and guiding BenefitDriven to “become the premier software solution for claims processing and benefits management,” he says.

BenefitDriven is the benefits administration software devel-

oped by BeneSys and now offered as a stand-alone solution to self-administered funds. It's also fully integrated with SpyGlass, Beacon's leading-edge software for health claims processing.

“I'm excited to leverage my background in customer success and SaaS operations to offer a superior product to clients old and new,” says Cip. “Happy clients not only help to improve our product offering but become advocates that help grow our reputation in the industry.” •