



Understanding the Fringe Trust

What's a fringe trust, how does it work and is it a compliant way to pay fringe benefits?

In short, yes a fringe trust is a completely legal, and affordable way to manage fringe benefits. There are some things you should know however, because not all trust options are equal or compliant. We'll show you how it works so you feel confident about your decision to use the eBacon Fringe Trust.

What's a trust?

A trust is a relationship where a trustor allows a trustee to hold title to property or assets for the benefit of a third party, or beneficiary. Trusts have been around since the 1930s and were used by unions to manage financial obligations. Since the 1950s non-union employers have also used trusts.

Trusts are more common than you think and are used to fund many different types of financial obligations and offerings. In fact, if you have a 401(k) you are already using a trust to manage your assets!

One type of trust is a bonafide fringe trusts. Bonafide fringe trusts are specially authorized by state and federal prevailing wage laws as a compliant method of handling fringe benefits.

According to the Department of Labor, fringe benefits are:

- Contributions irrevocably **made to a trustee or third party pursuant to a bona fide fringe benefit fund plan or program**.
- The rate of costs incurred in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated to the employees in writing. [Source](#)

Fringe benefit options

Fringe benefits can be **paid directly on a worker's paycheck** or through a **3rd party bona fide trust**. Employers first take credit for allowable benefits by subtracting them from the overall fringe amount, Next, they either put the remaining amount into a trust or onto the worker's paycheck. IF they are put in the paycheck, they are subject to taxes, workers' comp and possibly overtime, depending on the state.

Fringe benefit rates are based on union benefits, which are too high for non-union employers to meet with normal benefits. This means there are always remaining fringe to manage via a trust or on a paycheck.

While many employers do opt to pay fringe on paychecks because it is administratively simple, this is not the original intent of prevailing wage law. This is why paying fringe in cash is the most expensive option for both employer and employee. Fringe trusts, however, offer benefits for both the employer and the employee.

Fringe trusts

There are various trusts that are used to manage fringe payments, including the following:

Health – Includes traditional insurance plans, health reimbursement plans, and deduction reserves, also known as “hour bank” plans. Typically, employees can only access cash from these plans as reimbursements for health/dependent claims or for insurance premiums when they don’t work enough prevailing hours. **Exempt from taxes, workers’ comp and payroll-based general liability insurance.**

Pension – These are long-term employee investments but typically do not allow employees to easy access to funds. This is because Third Party Administrators (TPA) cannot easily handle in-service distributions, so they make requesting them an expensive and lengthy processes. **Exempt from taxes, workers’ comp and payroll-based general liability insurance.**

PTO/Sick Plans – These can auto-distribute periodically but are taxable and subject to workers’ comp either when the contribution is made or upon distribution. This means they have limited use when compared to simply paying fringes on paychecks. **NOT exempt from taxes, workers’ comp and payroll-based general liability insurance.**

Welfare, training, or industry funds (mostly for unions) – These funds go to the union and there are no cash benefits available except for death and disability benefits. **Exempt from taxes, workers’ comp and payroll-based general liability insurance.**

Supplemental Unemployment Benefits (SUB) – This plan has been declining in popularity since the Department of Labor (DOL) determined they are subject to annualization. **NOT exempt from taxes, workers’ comp and payroll-based general liability insurance.**

A closer look at SUBS

SUB plans were previously thought to be exempt from annualization, but in 2015 the DOL ruled that they are NOT exempt. This makes them far less desirable as a fringe management tool and it also means that companies using them for fringes can be found liable for back taxes, penalties and interest.

Here’s what that means:

If you contribute \$22/hr for an employee that works 50% prevailing vs non-prevailing, you can only take \$11/hr of credit for that contribution. Also, the IRS requires SUBs pay out cash only when a true employee termination has occurred. Many SUB plans violate these rules, exposing companies to a lot of financial and legal risk.

Read the official [DOL Brief on SUB annualization here.](#)

eBacon offers health-based and pension-based trusts.

eBacon Fringe Trusts

We are a TPA and a software company, so we make it easy for workers to access fringe trust funds. Employers receive tax savings and employees can take the cash out or choose from options like funding medical and dependent spending accounts.

When employees take the money out, they simply pay federally required fees: min. 20% withholding + 10% early distribution and any state applicable withholding. This generally is similar to the taxes they have when paid fringe on their paycheck: standard withholding, FICA/Med/SDI/EESUI/PFL.

WHAT IT IS

Our bona fide fringe trust is a traditional 401(k) that complies with the Employee Retirement Income Security Act (ERISA) & the IRS. This makes it a legal and safe way for companies to save on payroll taxes.

WHAT IT ISN'T

It's not a safe-harbor match or a deferred payment plan. It is a pre-tax employer contribution into a qualifying traditional 401(k) plan followed by an optional distribution.

HOW IT'S DIFFERENT

We're a third-party administrator and a software company. This allows us to automate the administrative work, distribute and deliver funds. Employees have the option to leave their fringe in the trust or take it out each week.

EXAMPLE ILLUSTRATION OF EBACON FRINGE TRUST SAVINGS

Residential Carpenter: • 50% Certified • \$20.65/Hour Fringe Benefit	Pre eBacon	Post eBacon
	Fringe Paid in Cash (Monthly)	eBacon Fringe Saver Trust* (Monthly)
Fringe Benefit paid to Employees per Month	\$1,789.67	\$1,789.67
Employer Payroll Taxes	\$136.91	\$0.00
Workers Comp Rate	\$143.17	\$0.00
General Liability Rate	\$17.90	\$0.00
Total Amount Paid	\$2,087.65	\$1,789.67
Gross Employer Monthly Savings	\$0.00	\$297.98
Gross Employer Annual Savings	\$0.00	\$3,575.76

* Assumes 100% fringe benefit is added to the trust

The material presented here is educational in nature and is not intended to be, nor should be relied upon, as legal or financial advice. Please consult with an attorney or financial professional for advice.

Thank you.

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