
ERISA Playbook (ERISA 101)



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October 3, 2023

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Agenda

- ▶ **ERISA 101 – Which Employers and Plans are Subject to ERISA?**
- ▶ **Plan Document and SPD/SMM Requirements**
- ▶ **Other Notice and Disclosure Requirements**
- ▶ **Annual Form 5500 Reporting**
- ▶ **Other Key ERISA Rules:**
 - **Fiduciary Duties**
 - **Claims Procedures**
 - **Additional Requirements for “Funded” Plans**

Health & Welfare Benefits Subject to ERISA

▶ ERISA “employee welfare benefit plans” – 3 basic elements:

1. Plan, fund or program;
2. Established or maintained by an employer;
3. For the purpose of providing one or more of the following listed benefits to participants and beneficiaries:
 - Medical, surgical or hospital care or benefits;
 - Benefits in the event of sickness, accident, disability, death or unemployment;
 - Vacation benefits;
 - Apprenticeship or other training benefits;
 - Daycare centers;
 - Scholarship funds;
 - Prepaid legal services;
 - Holiday and severance benefits; and
 - Housing assistance benefits.

ERISA Plan Examples

Health (*i.e.*, Major Medical) Plan

Dental Plan

Vision Plan

Prescription Drug Plan

**Life and Accidental Death &
Dismemberment (AD&D)**

Long Term Disability Benefit

Short Term Disability Benefit

**Health Flexible Spending
Arrangement (FSA)**

**Health Reimbursement
Arrangement (HRA)**

**Health “Gap” or “Bridge” Plan (or
other supplemental medical plan)**

**Cancer (or other Specific Disease),
Hospital, Critical Illness, or other
Fixed Indemnity Coverage**

Wellness Program

**Employee Assistance Program
(EAP)**

Disease-Management Program

Telemedicine Program

On-Site Medical Clinic

Prepaid Legal Plan

ERISA Plan Examples – Group Health Plans

Health (*i.e.*, Major Medical) Plan

Dental Plan

Vision Plan

Prescription Drug Plan

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Dismemberment (AD&D)

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On-Site Medical Clinic

Prepaid Legal Plan

Maybe, if
they provide
significant
benefits in
the nature
of medical
care

Statutory and Regulatory Exemptions

- ▶ **Governmental and Church Plans**
- ▶ **Programs maintained solely to comply with state-law requirements for workers' compensation, unemployment compensation, or disability insurance**
- ▶ **Plans maintained outside of the U.S. for nonresident aliens**
- ▶ **“Payroll Practice” Safe Harbor – Includes payment of:**
 - ▶ **Wages, overtime pay, shift bonuses, and holiday/weekend bonuses;**
 - ▶ **Sick-pay or income replacement benefits; and**
 - ▶ **Vacation, holiday, jury duty and similar pay.**
- ▶ **Voluntary Plan Safe Harbor**

ERISA Plans – Common Misconceptions

▶ Cafeteria (Code § 125) Plans

- ▶ Cafeteria plans are merely funding vehicles that allow employees to pay for certain benefits on a pre-tax basis and avoid constructive receipt tax issues
- ▶ Cafeteria plans, themselves, are not subject to ERISA; however, many of the benefits they fund are subject to ERISA

▶ Dependent Care Assistance Programs (DCAPs)

- ▶ Unlike Health Flexible Spending Accounts (Health FSAs), DCAPs are not subject to ERISA but are governed primarily by the rules under Code § 129

▶ Health Savings Accounts (HSAs)

- ▶ Generally not subject to ERISA, and rules governing HSAs are found primarily under Code § 223

ERISA Plans – Common Misconceptions

- ▶ **Key Concept: Group health plan status under ERISA vs. group health plan status under HIPAA / ACA**
 - ▶ **Excepted Benefits**
- ▶ **Fixed Indemnity Plans**
 - ▶ **Examples: Hospital, Accident, Critical Illness, Cancer, and Other Specified Disease or Illness Coverage**
 - ▶ **Are they ERISA plans? Maybe; depends on application of the voluntary plan safe harbor**
 - ▶ **Are they ERISA group health plans? Maybe; depends on whether payments are tied to specific health services/expenses**
 - ▶ **New proposed regulations published in July 2023**

ERISA Plan Documents

▶ Plan Document

- **Must be furnished within 30 days of receiving written request**
- **Failure to furnish within 30 days may result in penalties of up to \$110 per day**
- **Requirement to furnish also applies to other documents, including Summary Plan Description (“SPD”), latest Annual Report (*i.e.*, Form 5500), trust agreement, any contract or other instruments under which the plan is established or operated**

ERISA Plan Documents – SPDs & SMMs

▶ Summary Plan Description (“SPD”)

- Must be furnished to each participant within 90 days of becoming covered by the plan
- For new ERISA plans, must be distributed to all participants within 120 days after becoming subject to ERISA
- Updated SPD must be furnished every 5 years if changes made to SPD information or the plan is amended; otherwise, must be furnished every 10 years



ERISA Plan Documents – SPDs & SMMs

▶ Plan Amendments – SPD or SMM?

- Administrator of a plan must provide timely notice of amendments that would be material to reasonable participants
- Notice can be in the form of new SPD or SMM

▶ Summary of Material Modifications (“SMM”)

- Alternative to distributing new SPD when amendments are made
- Must be distributed to all participants not later than 210 days after the end of the plan year in which the change is adopted
- SMM for **Material Reduction** in group health plan benefits or services
 - Must provide no later than **60 days** after change becomes effective

ERISA Plan Documents – SPDs & SMMs

- ▶ **To whom must SPDs and SMMs be provided?**
 - Only to *participants covered under the plan* and not to beneficiaries (note that the same is not true for retirement plans)
 - Participant = Employee or former employee who is or may become eligible for benefits under the plan or whose beneficiaries are or may be eligible for benefits (includes COBRA qualified beneficiaries)
- ▶ **Consider DOL's electronic delivery requirements**
- ▶ **Consider SPD content requirements for all ERISA plans, and additional content requirements applicable to ERISA group health plans**

Group Health Plan Notices & Disclosure

▶ Summary of Benefits and Coverage (“SBC”)

➤ Who must provide the SBC?

- Self-Funded – Plan administrator
- Fully Insured – Insurer & plan administrator share obligation

➤ Must provide to participants with enrollment materials and upon renewal/reissuance of coverage; must also provide to special enrollees no later than 90 days following enrollment

➤ If re-enrollment is automatic, must provide no later than 30 days prior to the first day of the new plan year

▶ Notice of Material Modifications

➤ Any change affecting the information in the SBC

➤ Must provide no later than **60 days prior** to effective date

Group Health Plan Notices & Disclosure

▶ Notice of HIPAA Special Enrollment Rights

- HIPAA special enrollment period generally must be made available:
 - If an employee or dependent loses eligibility for group health plan or health insurance coverage;
 - On occurrence of certain life events (e.g., when a person becomes a dependent of an eligible employee because of birth, marriage, adoption, or placement for adoption); and
 - Following an individual's eligibility for a state premium assistance subsidy (e.g., Medicaid or CHIP)
- Initial notices must be provided at or before the time an employee is first offered the opportunity to enroll in the group health plan

Group Health Plan Notices & Disclosures

- ▶ **Other potential notice requirements:**
 - **Medicare Part D Creditable Coverage Notice**
 - **COBRA Notices**
 - **Newborns' Act Description of Rights Notice**
 - **Women's Health and Cancer Rights Act (WHCRA) Notice**
 - **Wellness Program Disclosures**
 - **Grandfathered Health Plan Notice**
 - **Employer CHIPRA Notice**
 - **Notice Regarding Availability of Health Insurance Marketplace**
 - **ACA Reporting and Employee Statements (Forms 1095-C) for Applicable Large Employers ("ALEs")**

ERISA Reporting & Related Disclosures

- ▶ **Form 5500 – Annual Report**
 - ▼ Due the last day of the 7th month following the end of the plan year (July 31 of the following year for calendar year plans)
 - ▼ Up to 2½ month *automatic* extension available with Form 5558
- ▶ **Summary Annual Report (“SAR”)**
 - ▼ Summarizes the data in the 5500
 - ▼ Must be distributed to all participants by the later of (i) 9 months after the end of the plan year, or (ii) 2 months after the due date for filing the 5500 (including approved extensions)
- ▶ **Are you required to file a Form 5500 for your welfare plan(s)?**
 - ▼ Depends on **PLAN SIZE** and **FUNDING METHOD**
 - ▼ Yes: Large Plans
 - ▼ Yes: Funded Plans
 - ▼ No: Small AND fully-insured, unfunded, or combination fully-insured & unfunded

Are You Required to File a Form 5500 for Your Welfare Plan(s)?

Must File if **EITHER** of these is true:

<u>Plan Size</u>		<u>Funding Method</u>
Large Plan – 100+ participants on first day of plan year	AND/ OR	Funded Plan – Essentially meaning benefits are NOT paid from general assets (e.g., paid from a trust)

Exempt from Filing **ONLY IF BOTH** are true:

<u>Plan Size</u>		<u>Funding Method</u>
Small Plan – Fewer than 100 participants on first day of plan year	AND	Unfunded Plan – Essentially meaning benefits are paid from general assets
		Fully-Insured Plan
		Combination Fully-Insured / Unfunded Plan

Other Key ERISA Requirements

- ▶ **Fiduciary Duties**
 - ▶ **Who is a fiduciary?**
- ▶ **Strict rules regarding claims procedures, including claims review and appeals process**
- ▶ **Funded plans must meet the trust requirement, fidelity bond requirement, and must include audit reports with annual Form 5500 filings**

Wrap Plan Documents

Three Primary Purposes:

One Plan

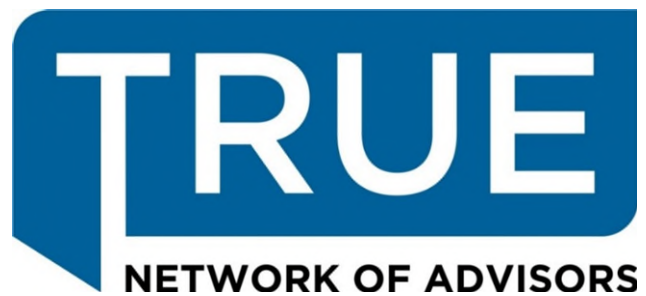
- Allows plan sponsor to treat all benefits as a single “employee welfare benefit plan” for ERISA purposes, including for purposes of filing 5500s

Supplemental Language

- Supplements benefits contracts / documents with missing provisions that are required under ERISA for plan documents and SPDs

Centralization

- Consolidates welfare benefits information under central document for ease of administration



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