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Introduction to ERISA

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Today's Speakers



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Please note that the following is intended to be used for general guidance purposes only — it is not intended to constitute tax or legal advice. Any question of application of the law should be addressed to legal or tax counsel. The information is current as of April 16, 2025.

What we will cover today:

- Overview: ERISA
- ERISA Requirements
- ERISA Fiduciary Obligations
- ERISA Enforcement: The DOL
- Penalties
- Key Takeaways
- NFP Resources



A pair of black-rimmed glasses with thin temples is resting on an open book. A red ribbon bookmark is visible on the left page. The background is softly blurred, showing more of the book and a wooden surface.

Overview: ERISA

Overview of ERISA

A Statute and An Agency

- ERISA is the Employee Retirement Income Security Act of 1974.
- The statute regulates pensions and other employee benefits.
- It is divided into four Titles, and Title I governs employee benefit plans.
- The DOL enforces and administers the statute.
- The DOL's Employee Benefits Security Administration (EBSA) promulgates rules, and the DOL's Office of Regulations and Interpretations issues advisory opinions (that bind only the party that asked for the opinion).



Overview of ERISA

ERISA Objectives

- Inform plan participants/beneficiaries of plan benefits and rights.
- Protect promised benefits for plan participants and beneficiaries.
- Provide fed govt with information on retirement and health plans.



Overview of ERISA

Plans Subject to ERISA

- ERISA applies to any employee welfare benefit plan if it is established or maintained:
 - by an employer engaged in commerce or in any industry or activity affecting commerce;
 - by any employee organization(s) representing employees engaged in commerce or in any industry or activity affecting commerce; or
 - by both.
- Most employer-sponsored group health and welfare benefits, whether fully insured or self-insured, are employee welfare benefit plans subject to ERISA.



ERISA Statutory Exceptions

- Governmental plans (including state, city and county, public school, and school district plans) and church plans are statutorily exempt from ERISA.
- Programs maintained solely to comply with state law requirements for workers' compensation, unemployment compensation, or disability insurance are exempt.
- ERISA does not apply to plans maintained outside of the US or its territories for nonresident aliens.



ERISA Regulatory Exceptions

- Payroll Practice Exemption
 - Benefit payment made by the employer solely out of the employer's general assets (and not through insurance or other funding arrangements), usually in the form of continuing salary payments made to the employee.
 - To remain within the payroll practice safe harbor, the plan cannot cover former employees, such as retirees.
E.g., salary continuation for employees out on disability



Voluntary Safe Harbor

- The DOL regulations also provide a safe harbor from ERISA requirements for certain “voluntary” insurance arrangements.
- Employees pay the full premium for coverage and the employer has minimal involvement.
- Voluntary plans include both group and individual insurance coverage, such as life and disability insurance, dental insurance, long-term care insurance and some types of medical bridge insurance (e.g., for extended hospital stays, specified illnesses or cancer treatment).
- Employers can basically only collect and remit employee deductions (and even then, only on an after-tax basis).



Voluntary Safe Harbor

- Employers cannot “endorse” the benefit. Endorsement includes:
 - Assisting employees with preparation of claim forms.
 - Negotiating with insurers.
 - Record keeping (other than maintaining a list of enrolled employees).
 - Permitting payroll deductions to be made on a pre-tax basis under the employer’s cafeteria plan. (Payroll deductions, if any, should be made exclusively on an after-tax basis.)



Overview of ERISA

Common Health and Welfare Benefit Plans

Type of Plan	Subject to ERISA?	Type of Plan	Subject to ERISA?
Dental plan	Yes	Major medical plan	Yes
Dependent care assistance program (DCAP)	No	Health reimbursement arrangement (HRA), including Excepted Benefit HRA (EBHRA), Individual Coverage HRA (ICHRA), and Qualified Small Employer HRA (QSEHRA)	Yes
Disability insurance (short-term or long-term)	Yes	Health savings account (HSA)	No*
Group term life insurance	Yes	Mini-med/limited benefit plan	Yes
Drug and alcohol treatment programs	Yes	Prescription drug plan	Yes
Health FSA (general or limited-purpose)	Yes	Vision plan	Yes

*HSAs are generally not subject to ERISA, provided the employer does not become overly involved in the arrangement or indicate that ERISA applies. For further information, refer to DOL Field Assistance Bulletin 2004-01 and the NFP publication [Health Savings Accounts: A Guide for Employers](#).

Overview of ERISA

ERISA Preemption

- As federal law, ERISA generally preempts (i.e., supersedes) conflicting state laws that regulate welfare benefit plans.
- However, whether a state law regulates a welfare benefit plan is often not a clear-cut determination.
 - Subject of ongoing litigation, particularly when it comes to regulating PBMs.
- Significantly, ERISA preemption does not apply to state laws regulating insurance and insurers.
 - Fully insured plans are subject to both ERISA and state insurance laws.
 - Self-insured plans are not considered insurers and thus are not subject to state insurance laws.
 - WARNING: self-insured multiple employer welfare arrangements (MEWAs) are an exception and must comply with both federal and state requirements.



ERISA Requirements

A modern office interior with three people working at a table. The room features large windows, brick walls, and contemporary furniture. A woman is seated on the left, a man is seated in the center with his back to the camera, and a woman is seated on the right. They are all focused on their work. The room is well-lit by natural light from the windows. In the background, there is a guitar on a sofa and a potted plant on the left.

Key ERISA Requirements: Overview

- Plan document, Summary plan description (SPD), Wrap document
- Summary of benefits coverage (SBC)
- Summary of material modification (SMM), Summary of material reduction (SMR), Summary of benefits coverage (SBC) - Midyear plan changes
- Form 5500 & Summary of Annual Report (SAR)
- ERISA electronic distribution rules
- Recordkeeping requirement



Plan Documents

What is it?

The written instruments under which a benefit plan is established or operated. More comprehensive version of SPD. Plan administrators are responsible for making sure the plan docs comply with requirements.

The plan documents must: (1) Designate a named fiduciary and plan administrator; (2) Identify the plan year, plan name, and plan number; (3) Include a description of benefits and eligibility; (4) Describe how benefits will be funded; (5) Include plan amendment and termination procedures; (6) Add required provisions for group health plans (including COBRA, USERRA, HIPAA, QMCSOs); and (7) Include subrogation and reimbursement clauses.

Do employers need to distribute plan documents to plan participants?

Employers need to retain their plan document in file and refer to the plan document for the plan terms and other plan rules. And when participants and beneficiaries request for a copy of the plan document, the plan document must be provided within 30 days.

Tips

- Make sure to include the information about the ACA employer mandate measurement method - the monthly or look-back measurement method if applicable.
- The plan's eligibility should align with the ACA employer mandate eligibility terms for medical plan.

Summary Plan Description (SPD)

What is it?

Informs plan participants their rights, what the plan provides and how it operates. The content must include plan eligibility requirements, a summary of benefits, applicable claims procedures, and ERISA rights and obligations. Plan administrators are responsible for making sure the plan docs comply with requirements.

To whom SPD needs to be provided?

Plan participants including COBRA qualified beneficiaries, qualified medical child support order alternative recipients, spouses/domestic partners or dependents of deceased participants, and guardians for covered individuals.

When is it due?

- Within 90 days for newly covered participants or 120 days for a newly established plan
- Then, every 5 years if material changes have been made
- Every 10 years if no material changes

Tips

- ERISA's SPDs are not the same as carriers' certificates, insurance contracts or summary of benefits. However, those carriers' documents are used to create SPDs.
- One option is to provide SPD with COBRA initial notice when participants are first enrolled in the plan.

SPD - "Wrap" Document and "Mega" Wrap Document

What is it?

- "Wrap" document: incorporates the applicable insurance contracts and provides the missing ERISA-required language.
- "Mega" wrap document: bundles several different types of ERISA benefit plan(e.g., major medical, dental, vision, and prescription drug coverage) into one document thus it would be considered one plan for purposes of filing Form 5500.

Tips

- Understand which plans are subject to ERISA, thus subject to SPD/Plan Document.
- May not want to include component benefit plans with fewer than 100 participants into a mega wrap document, as this could subject the plan to a Form 5500 filing that would otherwise be unnecessary.



Summary of Benefits Coverage (SBC)

What is it?

The ACA expanded the ERISA disclosure requirements by requiring health plans and insurers to provide SBC, a 5-page table summary of plan benefits, to all benefits eligible individuals before enrollment or re-enrollment. Updated SBC must be provided if plan change relates to information in the most recently provided SBC at least 60 days in advance of the change effective date.

To whom SBC needs to be provided?

Plan benefits eligible individuals (e.g., employees and dependents, employees on FMLA, COBRA QBs)

When must the SBC be distributed?

- At open enrollment
- At initial enrollment
- At special enrollment
- Upon request

Tips

- It's important to review thoroughly and verify the SBCs drafted by medical insurers for accuracy before distributing to individuals.

SMM, SMR, and SBC – Midyear Plan Changes

What are these?

- Summary of Benefits Coverage (SBC)
 - Updated SBC must be provided if plan change relates to information in the most recently provided SBC.
 - Due: within 60 days in advance of the change effective date.
- Summary of Material Modification (SMM)
 - Inform participants and beneficiaries about key plan changes
 - This is often done through OE materials.
 - Due: within 210 days after the end of the plan year in which a change is adopted.
- Summary of Material Reduction (SMR)
 - An SMR focuses on material reduction in covered services or benefits.
 - Due: within 60 days after the end of the plan year in which a change is adopted.

Tips

- The best practice is to provide SBC, SMM, or SMR as soon as practical before the deadline.
- An updated SPD can be used in lieu of SMM and SMR.

ERISA: Form 5500 Filings

What is it?

Form 5500, including all required schedules and attachments, is generally used to report information to the DOL about ERISA employee benefit plans. Plan administrators are responsible for making sure the plan docs comply with requirements.

When is it due?

- Due 7 months after plan year ends
- Extension 2.5 months is available by submitting Form 5558.
 - E.g., for calendar year plans, the due date is 7/31, or with an extension, 10/15.
- Delinquent Filer Voluntary Correction Program (DFVCP)

Tip:

One wrap document = One Form 5500 filing

Small employers' exemption

Small welfare benefit plans (generally plans that cover fewer than 100 enrolled EEs or former EEs as of the beginning of the plan year and are unfunded or fully insured, or a combination of both) are not required to file Form 5500. An unfunded plan is generally a self-insured plan where benefits are paid out of the general assets of the employer maintaining the plan.



Corporate Benefits
Compliance

FORM 5500: A GUIDE FOR EMPLOYERS

Form 5500, including all required schedules and attachments (Annual Return/Report of Employee Benefit Plan), is used to report information to the DOL concerning employee benefit plans and Direct Filing Entities (DFEs) that are subject to ERISA. Employers that sponsor ERISA benefit plans have compliance obligations regarding the annual filing of Form 5500.

This publication focuses primarily on the reporting of participant headcounts on lines 5 and 6 as well as certain other information related to lines 8 and 9 of Form 5500. It also includes information about fidelity bond requirements for self-insured funded plans and penalties for noncompliance with Form 5500 filing requirements. [Appendix A](#) provides a chart of **Form 5500 and Summary Annual Report Due Dates** (with and without extensions). For detailed information about Summary Annual Report (SAR) compliance obligations, including the exemption from SAR distribution requirements for plans that are not required to file a Form 5500, see the NFP publication [Summary Annual Report: A Guide for Employers](#).

This publication focuses primarily on the reporting of participant headcounts on lines 5 and 6 as well as certain other information related to lines 8 and 9 of Form 5500.

The Instructions for Form 5500, Annual Return/Report of Employee Benefit Plan provide as follows regarding lines 5 and 6 in Part II: "All filers **must** complete both lines 5 and 6 unless the Form 5500 is filed for an IRA Plan described in *Limited Pension Plan Reporting* or for a DFE. Note. Welfare plans (as distinct from pension plans) complete only lines 5, 6a(1), 6a(2), 6b, 6c, and 6d" (emphasis in original).

The following constitutes generally accepted best practices for completing lines 5, 6, 8, and 9 based on guidance available in the IRS Instructions for Form 5500. Individual plan sponsor and Form 5500 service provider practices may vary. Plan sponsors should consult with legal counsel or tax advisors as needed to review the Form 5500 filing requirements for their benefit plans and confirm the contents of their Form 5500 submissions.

SMALL PLAN EXEMPTION

Note that small welfare benefit plans (generally plans that cover fewer than 100 participants as of the beginning of the plan year and are unfunded or fully insured, or a combination of unfunded and fully insured) are not required to file Form 5500. For reference, an unfunded plan is generally a self-insured plan where benefits are paid out of the general assets of the employer maintaining the plan (and no plan assets are maintained in a separate account or trust).

The small plan filing exemption applies for the entirety of a given plan year based on the participant count at the beginning of the plan year, even if the number of participants increases to 100 or more during the plan year. The same logic applies in reverse: a plan with 100 or more participants at the beginning of the plan year must file a Form 5500 for that plan year even if the number of participants decreases to under 100 during the plan year. See under [Plan Characteristics Codes](#) below for more detailed information about codes that must be included on line 8b of Form 5500 when a plan newly gains or loses its small welfare benefit plan filing exemption.

Electronic and Other Distribution Methods of ERISA Required Documents

- **Hand Delivery**

- Should maintain records to demonstrate that notices and disclosures were distributed timely and were received by all intended recipients. (E.g., obtain the employee's signature confirming receipt.)
- Rarely used because of the administrative challenges.

- **Mail Delivery**

- First-class mail is the best practice.
- Should document compliance (e.g., employer's procedures), keep copies of address lists and notices, and record the dates that the documents were mailed to current and former employees, as applicable.

- **Electronic Delivery**

- Very important to follow the DOL's electronic disclosure safe harbor guidelines.
- Electronic delivery may not be appropriate for former employees or enrolled dependents of active or former employees (e.g., COBRA initial notice for covered spouses).
 - Obtain consent for electronic distribution from individuals (including COBRA participants and retirees) who do not have regular computer access at work.
 - Simply posting to an intranet site or benefits portal does not satisfy the distribution requirement and needs to notify employees by email, post card, or using QR codes or text messages linking notices.
- Should refer to NFP's Electronic Distribution Rules: A Guide for Employers publication for the details.



Recordkeeping Requirement

Records related to ERISA plans should generally be retained for eight years.

ERISA requires records to be kept and made available for examination for a period of not less than six years after the filing date of the Form 5500; this produces a rule of thumb to retain records for at least eight years.

8



A man with a beard, wearing a plaid shirt, is seated at a wooden desk. He is looking at a laptop screen with his left hand on the keyboard. His right hand is holding a pencil over an open spiral notebook. The background is dark and out of focus, suggesting an indoor office or study environment. The text "ERISA Fiduciary Obligations" is overlaid in white, bold, sans-serif font in the center of the image.

ERISA Fiduciary Obligations

Fiduciary Roles

- Under ERISA, parties that have or exercise discretionary authority or control over the management of the plan or plan assets are plan fiduciaries.
- Plan fiduciaries are held to a high level of conduct, like that of trustees, when performing plan obligations.
- ERISA requires that a named fiduciary be specified in the written plan document.
- However, fiduciary status is not based on designations alone, but on the actual functions that a party performs.

ERISA Fiduciary Governance: A Guide for Employers

Several recent developments have highlighted ERISA fiduciary obligations in the context of health and welfare plans. First, transparency legislation has made group health plan data, such as network pricing and service provider compensation, more readily available to fiduciaries. Second, numerous class action lawsuits have been initiated against group health plan fiduciaries, alleging breaches of various ERISA fiduciary obligations (in many cases, for a failure to utilize the newly available data). Third, regulators have focused more on health and welfare plan compliance; previously, such attention was largely directed at retirement plans. These developments are explained further in the following section entitled, **The Background: Recent Developments Impacting Group Health Plan Fiduciary Governance.**

ERISA group health and welfare plan sponsors, administrators, and other plan fiduciaries have always been required to adhere to a fiduciary code of conduct that involves duties of loyalty, impartiality, and prudence. Recent events underscore that it is crucial for sponsors of group health and welfare plans to review their fiduciary governance structures and practices to ensure they are fulfilling their plan obligations and thus minimizing related risks and potential liabilities to their organizations.

Fiduciary Roles

Plan Administrator

- Compliance responsibilities fall to Plan Administrator

Plan Sponsor

- Plan sponsor/Employer is default Plan Administrator

Other

- Party could be named in plan document
 - Title
 - Committee
 - Functional

ERISA Fiduciary Obligations

Plan Assets

- Under ERISA, a plan fiduciary must ensure that any plan assets are held in a trust.
- DOL guidance identifies the following three categories of funds as plan assets:
 - Participant contributions paid towards plan premiums.
 - Certain amounts attributable to plan assets (e.g., medical loss ratio rebates and similar insurance company rebates or settlement fund proceeds, to the extent the plan premiums were paid from participant contributions).
 - Funds held in a separate account or trust for the purpose of paying plan benefits.
- The DOL won't enforce trust requirements to participant contributions that are forwarded to an insurer and/or made through a cafeteria plan within a reasonable period of time (around 90 days).
 - For the exemption to apply, the employer must make payments from its general assets and not maintain a separate plan account.



ERISA Fiduciary Obligations

Fiduciary Bond and Accountant Report

- Plans that maintain trusts are subject to these requirements. Practically, this doesn't come up too often.
- Trustees must post fidelity bonds to protect plan assets against loss due to fraud or dishonesty by plan officials.
- Trusts must also provide an accountant's opinion (issued by a CPA firm) that the trust's financial records are prepared in accordance with generally accepted accounting principles. The opinion is filed with the plan's Form 5500.



ERISA Fiduciary Obligations

Principal Duties

- The primary duties of an ERISA health and welfare plan fiduciary are:
 - The duty of undivided loyalty to plan participants
 - The duty of prudence
 - The duty to act in accordance with the plan documents



Principal Duties

Acts solely in the interests of participants/beneficiaries

For the exclusive purpose of providing plan benefits, defraying reasonable expenses

With the skill, prudence and diligence of a prudent person

In accordance with plan documents and instruments

Duty of Loyalty

- Plan fiduciaries must act for the sole purpose of providing benefits to participants and their beneficiaries.
- Fiduciaries should avoid conflicts of interest and prohibited transactions.
 - These include transactions on behalf of the plan that benefit parties related to the plan, such as other fiduciaries, service providers, or the plan sponsor.
 - Hiring of plan service providers is a fiduciary function!
- This duty also imposes an affirmative obligation to provide participants with adequate information, in an understandable format, to enable them to make informed and cost-conscious decisions regarding their plan benefits.

ERISA Fiduciary Governance: A Guide for Employers

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Duty of Prudence

- Plan fiduciaries must act with the same care, skill, prudence and diligence as a comparable knowledgeable plan fiduciary acting under similar circumstances.
- Fiduciaries must be well-informed in their areas of responsibility and, as necessary, hire or consult with experts with the requisite background and experience to give appropriate advice.
- This duty emphasizes the fiduciary decision-making process as opposed to the results. Therefore, it is important for fiduciaries to establish and follow written procedures for their deliberations.
- Hiring of plan service providers is a fiduciary function!

ERISA Fiduciary Governance: A Guide for Employers

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ERISA Fiduciary Obligations

Duty to Follow the Plan Document

- The plan administrator must operate the plan in accordance with the terms of the written plan document.
- It isn't a good idea to make exceptions or to deviate from the plan's terms as formalized in the documents!
 - An exception would not only be a breach of the duty to adhere to the document terms but may set a precedent that would need to be applied to other similarly situated employees.
- The plan administrator must become familiar with the specific provisions (e.g., eligibility, waiting periods) of the plan document to properly administer the plan.

ERISA Fiduciary Governance: A Guide for Employers

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ERISA Enforcement: The DOL

For Which Compliance Items Does DOL Have Authority?

- The Big Four:
 - ERISA
 - COBRA
 - HIPAA
 - ACA
- Additional Federal Mandates:
 - Newborn's and Mother's Health Protection Act
 - Women's Health and Cancer Rights Act (WHCRA)
 - Mental Health Parity and Addiction Equity Act (MHPAEA)
 - Genetic Information Nondiscrimination Act (GINA)



What May DOL Do With That Authority?

DOL Has Authority To:

- Enter a company
- Inspect books and records
- Ask questions
- Request documents from company and all service providers
- Subpoena documents, forms, notices and communications
- Compel testimony of witnesses
- Investigate crimes (Share information with other agencies)
- Assess Penalties and bring civil actions



How Does the DOL Conduct an Audit?

Five Steps:

- 1) Initial Contact and Request for Documents
- 2) Location Visit & Interviews
- 3) Voluntary Compliance Letter
- 4) Correction Process
- 5) Closing Conference and Letter



How Does the DOL Conduct an Audit? Step 1

- Initial Contact
 - By phone or letter
- Request for Documents
 - **Plan-specific:** written plan document, SPDs, SMMs, service provider contracts, insurance contracts, documents relating to claims processing and payment
 - **General Notices:** COBRA HIPAA
 - **Reports:** Form 5500, SARs, insurance company invoices
 - **ACA -specific items:** grandfathered status disclosure statement, enrollment notice for dependents up to age 26, lifetime limit notice, summary of benefits and coverage (SBC), Marketplace notice, etc.

How Does the DOL Conduct an Audit? Step 2

- Location Visit to Review Additional Documents:
 - Payroll and employee census
 - Accounting items
 - Claims procedures and appeals processes
 - Employee communications
 - Notices, enrollment materials, posters
- Interviews With:
 - Plan sponsor, plan committee members, plan fiduciaries
 - HR personnel, benefits manager, others with plan knowledge

How Does the DOL Conduct an Audit? Step 3

- Voluntary Compliance Letter
 - Sent 2 to 3 months later
 - Lists deficiencies (and citations to the law)
 - No plan document, no SPD
 - Required notices
 - Plan terms violate law
 - 10 days to respond

How Does the DOL Conduct an Audit? Step 4

- Correction Process
 - Create, correct and distribute required documents
 - Adjust timing or distribution of notices
 - Modify initial or annual enrollment processes
 - Modify contract terms or conditions
 - Engage ERISA counsel, broker/consultant, HR, Benefits, etc.
- Closing Conference and Letter



Penalties

Penalty Amounts

ERISA Penalties Increase Annually

	2025	2024
Failure to File Form 5500	\$2,739/ day	\$2,670/ day
Failure to Provide SBC	\$1,443/failure	\$1,406/failure
Failure to Provide Info to DOL	\$195/day (Max. \$1,956/ request)	\$190/day (Max. \$1,906/ request)
Failure to File MEWA M-1	\$1,992/day	\$1,942/day





Key Takeaways and Resources

Key Takeaways and Resources

- Understand key ERISA concepts, including the fiduciary obligations imposed by the law.
- Understand ERISA written plan document basics, including wrap document and SPD/Plan document requirements.
- Understand the Form 5500 filing requirement.
- Understand the requirements for electronic distribution.



Key Takeaways and Resources



Corporate Benefits
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ERISA COMPLIANCE CONSIDERATIONS FOR HEALTH AND WELFARE BENEFIT PLANS

Under ERISA,
must adhere
fiduciary ca
that involve
loyalty, pru
impartiality



Corporate Benefits
Compliance

ELECTRONIC DISTRIBUTION RULES: A GUIDE FOR EMPLOYERS

Employers that sponsor
group health plans
have compliance
obligations regarding
the distribution of
various materials to
prospective and actual
plan participants.

Employers that sponsor group health plans of all sizes and funding types (fully insured and self-insured) have compliance obligations regarding the distribution of various materials to prospective and actual plan participants. This publication discusses the distribution rules for notices and disclosures required by group health plans. It includes a **Sample Employee Communication** (Appendix A) and a **Sample Employee Consent to Receive Plan Disclosures Electronically** (Appendix B), as may be required under certain circumstances explained further below.

Employers should recognize that compliance with the DOL's electronic distribution rules also necessitates compliance with the timing of the distribution of required notices. Importantly, notices should be provided during any required time frame to ensure that the provision of the notice satisfies the regulatory requirement. Notices provided at times other than when required may not satisfy the regulatory requirement even if they are provided according to the DOL's electronic distribution rules. For details regarding when specific group health plan regulatory compliance notices must be distributed, including whether they can be distributed electronically, see the NFP publications **Required Group Health Plan Notices Overview** and **Required Group Health Plan Notices Chart**.

DISTRIBUTION RULES

The Department of Labor (DOL) disclosure rules require that the plan sponsor (generally the employer) "shall use measures reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals." Depending on the type of notice or disclosure, delivery methods can include hand delivery, mail delivery, and electronic delivery. Certain restrictions may apply, as discussed in greater detail below.

Hand Delivery

DOL rules permit hand delivery of notices. Although the DOL rules do not precisely describe what constitutes hand delivery, they clarify that merely placing copies of a notice or disclosure in a common area (such as an employee lunchroom) is not sufficient. Employers that rely on hand delivery should maintain business records to demonstrate that notices and disclosures were distributed timely and were received by all intended recipients. Further, it is advisable to obtain the employee's signature confirming receipt. Given the administrative challenges of hand delivery, this method is rarely used except in limited circumstances (such as when notices are distributed at a meeting for which company minutes provide a reliable record of the action and the attendees).

Mail Delivery

DOL rules permit mail distribution of notices. While notices can be distributed via first-, second-, or third-class mail, first-class mail is the best practice for mail delivery of required group health plan notices. Employers must ensure that the mailing list is accurate and up-to-date. Where second- or third-class mail is used, employers must guarantee



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FORM 5500: A GUIDE FOR EMPLOYERS



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SUMMARY ANNUAL REPORT: A GUIDE FOR EMPLOYERS

is pr
ima
port
adca
and 6
her
late
rm 5

Sponsors of group
plans that are subject
to ERISA must generally
distribute SARs to all
plan participants by
the last day of the ninth
month following the end
of the ERISA plan year.
However, unfunded self-
insured plans are not
required to provide SARs.

A summary annual report (SAR) is an annual statement in narrative form that summarizes the latest annual report (Form 5500) for an ERISA plan. Generally, employers that sponsor group plans subject to ERISA and Form 5500 filing requirements have compliance obligations regarding the annual distribution of SARs to plan participants. An exception to the SAR distribution requirement applies to unfunded self-insured plans, as explained in greater detail in the SAR Distribution Requirement section below.

This publication provides an overview of the SAR distribution requirement. It describes the process for achieving compliance and includes a chart of **Form 5500 and Summary Annual Report Due Dates** (Appendix A) and a **Sample Employee Communication** to accompany the annual distribution of the SAR (Appendix B). A separate NFP publication, **Form 5500: A Guide for Employers**, addresses Form 5500 requirements, including the exemption from filing Form 5500 for plans that meet the definition of a small welfare plan. For general information about ERISA, see the NFP publication **ERISA Compliance Considerations for Health and Welfare Benefit Plans**.

SAR DISTRIBUTION REQUIREMENT

Sponsors of group plans that are subject to ERISA are generally required to distribute SARs to all plan participants. "Participants" in this context means any employees or former employees, including retirees and COBRA participants, who are enrolled in the plan at the time the SAR is distributed. Employers are required to distribute separate SARs for each separate Form 5500 that is filed with the DOL.

If a plan is not required to file a Form 5500, then there is no corresponding SAR distribution requirement. However, the reverse is not always true. That is, some plans that are required to file a Form 5500 are nonetheless exempt from the SAR distribution requirement. Specifically, under the DOL's SAR rules, wholly unfunded welfare plans are not required to provide SARs, regardless of size, even though large, unfunded welfare plans must file a Form 5500. (For reference, an unfunded plan is generally a self-insured plan where benefits are paid out of the plan sponsor's general assets and no plan assets are maintained in a separate account or trust.) By contrast, all large, fully insured plans are subject to both the Form 5500 filing requirement and the SAR distribution requirement. For further information about Form 5500 filing requirements, see the NFP publication **Form 5500: A Guide for Employers**.

For an ERISA plan that is terminated, the SAR requirement applies to the year in which the plan terminated. The SAR must be distributed relative to the final annual Form 5500 filing of the terminated plan, even though there are no current participants at the time of the SAR distribution. For terminated plans, it is generally recommended that employers distribute SARs to all individuals who were participants during the plan year to which the SAR relates.



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REQUIRED GROUP HEALTH PLAN NOTICES OVERVIEW



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ERISA Fiduciary Governance: A Guide for Employers

A photograph of an audience in a conference room, seen from behind, with several people raising their hands. The image is dimly lit and has a dark overlay. The text is centered in white.

Questions?
Thank you for joining us!