UBA ComplianceAdvisor

WHAT YOU NEED TO KNOW

What Group Plan Sponsors Need to Know about ERISA

Updated July 2018

The Employee Retirement Income Security Act (ERISA) was signed in 1974. The U.S. Department of Labor (DOL) is the agency responsible for administering and enforcing this law. For many years, most of ERISA's requirements applied to pension plans. However, in recent years that has changed and group plans (called "welfare benefit plans" by ERISA and the DOL) now must meet a number of requirements.

Q1: Are any plans exempt from ERISA?

A1: Yes, government and church plans do not need to comply with ERISA. Government plans generally include plans sponsored by state and local governments and public school corporations. All other plans must meet ERISA's requirements, regardless of their size. This includes both fully insured and self-funded plans, and plans sponsored by unions as well as employers.

Q2: What types of welfare benefit plans does ERISA apply to?

A2: ERISA applies to:

- Health insurance (medical, dental, vision, prescription drug, health reimbursement arrangements and health flexible spending accounts; health savings accounts are not governed by ERISA but the related high deductible health plan is);
- Group life insurance;
- Disability income or salary continuance unless paid entirely by the employer from its general assets;
- Severance pay;
- Funded vacation benefits, apprenticeship or other training programs, day care centers, scholarship funds, or prepaid legal services; and
- Any benefit described in section 302(c) of the Labor Management Relations Act (other than pensions on retirement or death).

Note: an employee assistance program or a wellness program is considered a group health and so must meet ERISA's requirements if it provides significant medical care.

There is an exception for "voluntary" group or group-type insurance programs that have minimal employer or employee organization involvement. See Q&A 21 for details.

©2018 United Benefit Advisors, LLC. All rights reserved.

Q3: What are the key requirements of ERISA?

A3: Arrangements which are subject to ERISA must meet these requirements:

- Reporting and disclosure requirements, which include:
  - Form 5500 annual reports and summary annual reports,
  - A written plan document and summary plan description (SPD), and
  - Participant notices;
- Fiduciary requirements, including following the terms of the plan, holding plan assets in trust if benefits are not insured, and carefully choosing and monitoring the performance and costs of those that provide services to the plan;
- Fidelity bond.

Q4: Does an employer's size affect its ERISA obligations?

A4: Most ERISA requirements – including the requirement to provide a summary plan description (SPD) – apply no matter how small or large the employer is. However, a plan that is insured and that has fewer than 100 participants on the first day of its plan year does not need to file a Form 5500 or the related summary annual report.

Q5: What is a Form 5500 and who needs to file it?

A5: The Form 5500 is the annual report plans make to the DOL and IRS to report required information about the plan's financial condition and operations. Most group and pension plans that are subject to ERISA are required to file a Form 5500. There is, however, an exception for group plans with fewer than 100 participants as of the first day of the plan year and that are unfunded, insured, or a combination of unfunded and insured. A plan is considered unfunded if the employer pays the entire cost of the plan from its general accounts. A plan with a trust is considered funded.

Q6: When is the Form 5500 due?

A6: The Form 5500 is due by the last day of the seventh month following the end of the plan year. For a calendar year plan, the deadline is July 31. A 2-1/2 month extension is available.

Q7: What is a summary annual report (SAR)?

A7: A SAR is a summary of the information contained in the Form 5500; it is provided to plan participants.

Q8: Which plans need to distribute an SAR?

A8: Benefit plans that file a Form 5500 are required to distribute SARs, unless they are unfunded (that is, benefits are paid directly by the employer without insurance or a trust). If a plan is not required to file a Form 5500, then a SAR is not required.

©2018 United Benefit Advisors, LLC. All rights reserved.

Q9: When is the SAR due?

A9: The SAR must be provided to all participants by the last day of the ninth month following the end of the plan year. For a calendar year plan, the deadline is September 30. Plans that have an extension of time to file the Form 5500 must provide the SAR within two months after the extension ends.

Q10: What is a plan document?

A10: A plan document is the official governing document for the plan. ERISA requires that it include the plan's terms for a number of items including eligibility, benefits, exclusions, a named fiduciary and plan administrator, claims and appeals procedures, funding information, and other items. In most situations, a group insurance policy will not include all of the required information and so will not qualify as a plan document.

Q11: What is an SPD?

A11: An SPD is the document provided to participants to explain their rights and obligations under the plan. It is intended to provide a summary of the plan's terms and should be written in a way the average participant can understand it. However, it has become increasingly common for plans to use a combination plan document/SPD and most DOL offices permit this. (If the plan document and SPD are separate and the participant requests a copy of the plan document, the plan sponsor must provide the plan document within 30 days after it is requested, even though an SPD has already been provided.)

Q12: What happens if the plan's terms change?

A12: The plan document and SPD will need to be revised ("amended"). If benefits are being reduced in any way, the plan amendment and summary of material modifications (SMM) must be provided within 60 days after the effective date of the change. If, however, the change affects the Summary of Benefits and Coverage (SBC) and it is made other than at renewal, a revised SBC must be provided within 60 days before the effective date of the change. Providing the updated SBC will meet the SMM requirement. All other changes must be communicated within 210 days after the end of the plan year.

Q13: Will an insurance certificate satisfy the requirement to provide an SPD?

A13: Usually a certificate of coverage will not meet the SPD requirements. While most insurance certificates contain some of the items required in an SPD, most do not include all of the required information, which includes (but is not limited to) contact information for the plan sponsor, plan administrator, the agent for service of legal process and any trustees, the ERISA plan number, and a model statement of participants' rights under ERISA. An employer may add an "ERISA wrapper" to the certificate so that the combined wrapper and certificate have all of the needed information if it wishes to.

Q14: What is a "wrap" plan?

A14: A wrap plan is a plan document, or a combination plan document/SPD, that is designed to include all of the information required by ERISA through a combination of the information included in the insurance policy or certificate and additional information required by ERISA. Many employers use a wrap document that includes all or most of their group benefits, like medical, dental, and life benefits.

©2018 United Benefit Advisors, LLC. All rights reserved.

Q15: What is a plan year?

A15: The plan year is the 12-month period designated as the plan year in the plan document and SPD. In some situations, a shorter plan year than 12 months is allowed. The plan year may, but does not have to be, the same as the policy year. If the plan year and policy year are different, the plan year will usually be the date that the employer must meet new federal compliance requirements.

Q16: What is an ERISA plan number?

A16: All welfare plans that are subject to ERISA must choose a 3-digit ERISA number that begins with a "5," such as 501. This number is primarily used for Form 5500 purposes, although it must be included in the SPD. Each plan needs a discrete plan number. Once a plan number is used, it cannot be reused.

Q17: What annual notices must a plan provide?

A17: ERISA requires plans to provide a variety of notices, depending upon the design of the plan. The notices include notices regarding aspects of PPACA, COBRA, HIPAA Portability and Nondiscrimination, the Women's Cancer Rights Act, the Newborns and Mother's Health Protection Act and the Children's Health Insurance Program, and qualified medical child support orders. Additional information may be found in the DOL Reporting and Disclosure Guide.

Q18: What is a fiduciary?

A18: A fiduciary is someone with the power to control and manage the administration of the plan or how the plan's assets (funds) are used. The plan document must list certain people (or job titles) as fiduciaries; other people may also be fiduciaries based on how they act.

Q19: What are a fiduciary's main responsibilities?

A19: A fiduciary must:

- Act in the best interest of participants and beneficiaries. Fiduciaries need to monitor the work done by third parties and not pay more than reasonable fees.
- Make informed decisions, which means if the fiduciary does not have the expertise needed he or she must obtain expert help.
- Administer the plan according to its written terms.
- Not take advantage of its status as an insider. This includes a requirement to promptly send contributions to carriers.

The DOL has prepared a summary for fiduciaries that may be helpful: Understanding Your Fiduciary Responsibilities Under a Group Health Plan

Q20: What is a fidelity bond?

A20: A fidelity bond is a kind of insurance to protect the plan from a fiduciary's misuse of the plan's assets. A fidelity bond must be for at least 10% of the plan's assets, with a $1,000 minimum and a $500,000 maximum. Often this coverage is simply added to the bond for the plan sponsor's pension plan. Clearly self-funded plans need a fidelity bond. Opinions vary as to whether insured plans need a bond.

©2018 United Benefit Advisors, LLC. All rights reserved.

Q21: What is a voluntary plan?

A21: To qualify as a "voluntary plan" that does not need to comply with ERISA:

- The employee's purchase of the plan must be entirely voluntary;
- Employees must pay the full premium; and
- The employer's involvement must be minimal, which means that the employer may not contribute toward the premium, endorse the plan or make a profit from the plan (such as through a commission or override). Basically, the employer can have no more involvement than to allow the insurer to advertise and sell the plan to its employees and to collect and remit employee salary reductions for premiums.

Both group and individual insurance policies may qualify as a voluntary benefit. Examples of benefits that may qualify as voluntary benefits include life, disability, vision, long-term care, hospital confinement, and specific illness policies.

Q22: Are there penalties for not meeting ERISA obligations?

A22: Yes, and the penalties can be large. For example, the fine for filing a late Form 5500 is up to $2,140/day (indexed annually) for each late Form 5500. The penalty for late delivery of an SPD, SMM, or SAR to a participant who requests this is $110/day. The penalty for failure to provide plan documents requested by the DOL is up to $152/day not to exceed $1,527 (adjusted annually).

Criminal liability is also possible for failure to file a required Form 5500. Criminal penalties can be up to $100,000, or up to 10 years in prison, or both. If the violation is made by a corporation, then the penalty can be up to $500,000. Under other federal criminal laws, the penalty amount is open-ended.

3/24/2015

Updated 7/16/18

This information is general and is provided for educational purposes only. It is not intended to provide legal advice.
You should not act on this information without consulting legal counsel or other knowledgeable advisors.

Shared Wisdom. Powerful Results.®

©2018 United Benefit Advisors, LLC. All rights reserved.