



## ERISA 101 Webinar – Questions & Answers

- **Q: Does ERISA apply to employers of fewer than 20 employees?**
  - **A:** Yes, ERISA covers all employers unless an exemption applies. There is no minimum number of employees that a business must have in order for ERISA to apply to the company.
- **Q: Can you charge a different premium % for employees with different salary levels?**
  - **A:** ERISA permits distinctions based on bona-fide employment-based classifications and there is nothing in ERISA expressly prohibiting employee insurance-plan contributions on an income-based sliding scale. Also, under the Affordable Care Act reverse discrimination (charging less to those who make less) is generally permissible. Finally, in providing guidance on ACA affordability safe harbors, the IRS specifically allows for “a periodic contribution that is based on a consistent percentage of all Form W-2 wages.”
- **Q: Does ERISA apply to towns?**
  - **A:** Generally, no. ERISA does not apply to plans established or maintained by governmental entities, or political subdivisions thereof, for their employees.
- **Q: Does ERISA apply to voluntary AFLAC plans that are pre-taxed?**
  - **A:** The DOL provides a safe harbor which exempts certain voluntary insurance plans from ERISA if specific requirements are met. Most importantly, they must be established as a 100% employee paid arrangement and the employer must have very minimal involvement.
- **Q: When is a separate SPD required and when can plans be bundled?**
  - **A:** An SPD “Wrap Plan” is a document that wraps around, incorporating by reference, the insurance contracts/COCs for all insured benefits provided by an employer to create a single Employee welfare benefit plan. Generally, all employer welfare arrangements that are subject to ERISA can be included in a “Wrap Plan.” Employers often prefer separate SPDs for FSA benefits, due to the fact that many employees are not participating in the FSA.
- **Q: Do you have to send out an SBC annually?**
  - **A:** Yes. The Summary of Benefits and Coverage (SBC) must be provided at these times:
    - i. When individuals enroll in coverage for the first time
    - ii. At the beginning of *each* new plan year
    - iii. Within seven business days, if an individual requests a copy
- **Q: Do ERISA notices have to be provided on paper or can they be provided electronically?**
  - **A:** Electronic Distribution is permissible if the method used satisfies ERISA’s requirement that SPDs be “furnished” to employees. This requires that the employer be able to demonstrate that its electronic delivery method was *reasonably calculated* to ensure that participants actually received the SPD. For example, the DOL has approved of delivery methods whereby an SPD (or a link to an SPD as posted on a website) is attached to an e-mail message that is sent to plan participants, so long as the employer’s e-mail system uses a return-receipt or notice of undelivered e-mail feature. Posting SPDs on an intranet site may be an excellent starting point, so long as the process does not stop there.