

# ERISA 101 – Employer Basics



**Presented By:**

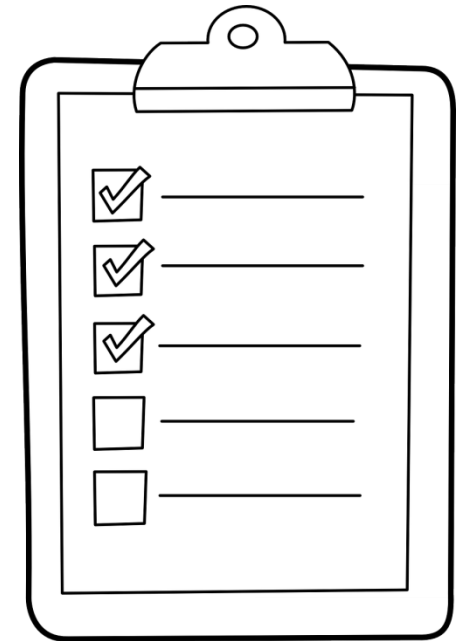
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*Marshall  
& Sterling*  
GROUP BENEFITS

# Today's Agenda

- History and Background of ERISA
- Benefits and Employers Subject to ERISA
- Key ERISA Requirements



# Background & History

- The Employee Retirement Income Security Act (ERISA) of 1974 establishes minimum standards for retirement, health, and other welfare benefit plans.
- ERISA does NOT require employers to provide benefit plans;  
→ Once an employer decides to provide benefits that are subject to ERISA, the plan's operation must be managed in compliance with its requirements.
- For most employee benefit plans, ERISA requires:
  - *Comprehensive Disclosure to Covered Individuals (SPDs, SBCs, etc.)*
  - *Detailed Reporting & Accountability (Form 5500)*
  - *Procedural Safeguards & Fiduciary Code of Conduct*

# Regulatory Environment

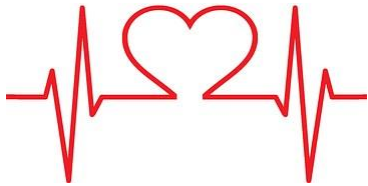
- Body of laws regulating employee benefit plans generally referred to as ERISA:
  - Internal Revenue Code (IRC)
  - Title 29 of the United States Code (ERISA)
- Administered by the Employee Benefits Security Administration (EBSA), a division of the U.S. Department of Labor (DOL) and the Department of Treasury.
- ERISA has been amended and expanded over the years to comprise additional health laws, including:
  - Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA)
  - Health Insurance Portability and Accountability Act of 1996 (HIPAA)
  - Affordable Care Act of 2010 (ACA)

# Covered ERISA Plans

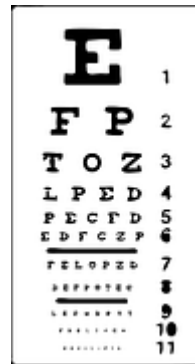
- Three Basic Elements of an ERISA Welfare Benefit Plan:
  1. There must be a Plan, Fund or Program
  2. That is established or maintained by an employer
  3. For the purpose of providing one or more benefits to participants and beneficiaries.

# Plans That Must Comply

Medical



Vision



Prescription



Dental



Hospital



Accident



Health FSAs  
& HRAs



# Plans That May Not Have to Comply

- Wellness & EAP Programs
- Sickness, accident, disability, or unemployment (“payroll practice” exemption)
- Severance Arrangements
- Voluntary Benefits
- Things to consider:
  - Whether the program provides “medical care”
  - The level of employer discretion and administration
  - Whether benefits are paid out of employer’s general assets

# ERISA Exemptions

- Church Plans & Governmental Plans
- Programs maintained *solely* to comply with state law requirements for workers compensation, unemployment compensation, disability insurance (e.g. NYDBL)
- Plans maintained outside the US for non-resident aliens



# ERISA Group Health Plan Requirements

There are certain specific requirements under ERISA for employer-sponsored health plans, including:

- ✓ Written plan documentation
- ✓ Summary plan descriptions (SPD)
- ✓ Notices posted and published annually
- ✓ Summary of material modifications (SMM)
- ✓ Detailed reporting to the government
- ✓ COBRA compliance
- ✓ HIPAA and HITECH compliance
- ✓ Medicare Part D notifications to participants
- ✓ Adhering to standards of conduct in plan management



# Who is responsible for ERISA Compliance?

- Plan sponsor/administrator is ultimately responsible: This is generally the employer.
- Other ERISA “fiduciaries”—anyone performing ERISA fiduciary functions, or using discretion in administering and managing a plan.
- The DOL can impose civil or criminal penalties for companies that do not comply with ERISA rules. Most common violations of ERISA:
  - Improperly denying benefits to employees
  - Breach of fiduciary duty
  - Unequal or biased coverage

# Written Plan Documentation

Applies to each plan an employer maintains. Document varies with type of benefit and may include:

- Latest updated SPD
- Latest Form 5500
- Insurance contract
- Other instruments under which the plan is established or operates

Copies must be furnished no later than 30 days after a written request. Plan administrator must make copies available at its principal office.

# Summary Plan Description (SPD)

- Primary vehicle for informing participants and beneficiaries about their plan and how it operates. Must be written for average participant and be sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan.
- Contains, among other things:
  - Plan name & sponsor information
  - Eligibility & available benefits
  - How benefits will be funded
  - Standard of review for benefit decisions
  - Named Fiduciary
  - Plan amendment and termination procedures
  - Required provisions for COBRA, HIPAA, Special Enrollments, etc.
- This document is given to employees within 90 days after they are covered by the plan and within 30 days of a request. Generally, SPDs also must be redistributed every 5th year. The SPD must be current within 120 days.

# Summary of Material Modification (SMM)

- Describes and must be provided when there is a material modification in the terms of the plan or any change in the information required to be in the SPD. The SMM updates the plan's SPD.
- Distribution of updated SPD satisfies this requirement.
- Provide to participants and beneficiaries receiving benefits not later than 210 days after the end of the plan year in which the change is adopted.

# Penalties for Not Having an SPD

- There are no specific penalties under ERISA for failing to have a plan document or SPD. However, not having a plan document or SPD can have significant consequences for an employer, including:
  - Inability to Respond to Participant Requests. Plan administrators may be charged up to \$110 per day if it does not provide a plan document within 30 days of an individual's request.
  - Benefit Lawsuits
  - DOL Audits



# 5500 & Summary Annual Report (SAR)

- ERISA requires the plan administrator of each separate ERISA plan to file an “annual report” with the DOL containing specified plan information.
- IRS Form 5500 is used for this purpose. All ERISA plans must file a Form 5500 or Form 5500-SF for a plan year unless they are eligible for a filing exemption.
  - Plan administrators that are required to file a Form 5500 must provide participants with a summary of the information in the Form 5500 → **Summary Annual Report**
- Benefits may be bundled or “wrapped” under one plan. This consolidates various component benefit plans into a single plan for reporting and disclosure.
- Small unfunded, insured, and combination unfunded/insured welfare plans are **exempt** from the Form 5500 requirement. To qualify for this exemption, a plan must cover “fewer than 100 participants **at the beginning of the plan year.**”

# Form 5500 Deadlines & Penalties

- The Form 5500 must be filed by the last day of the seventh month following the end of the plan year, unless an extension applies. For calendar year plans, the deadline is normally July 31 of the following year.
- The DOL has the authority under ERISA to assess penalties of up to \$1,100 per day for each day an administrator fails or refuses to file a complete Form 5500. The penalties may be waived if the noncompliance was due to reasonable cause.
- The Delinquent Filer Voluntary Compliance Program (DFVCP): Created to encourage plan administrators to voluntarily file overdue Forms 5500. Offers a way to avoid potentially higher penalty assessments by voluntarily completing late Form 5500s. Only available prior to being notified in writing by the DOL of a failure to file a timely annual report.



# Other Group Health Plan Notices

- COBRA Notices
- Notice of Special Enrollment Rights
- Wellness Program Disclosure
- Employer CHIPRA Notice
- Michelle's Law Enrollment Notice
- Newborns' Act Description of Rights
- Women's Health and Cancer Rights Act (WHCRA) Notice
- Internal/External Review Process Disclosure
- Genetic Information Nondiscrimination Act (GINA) Notice
- ACA Notices



For more information on these notices, see the DOL's *Reporting and Disclosure Guide for Employee Benefit Plans* (<https://www.dol.gov/ebsa/pdf/rdguide.pdf>)

# ERISA Disclosures Under ACA

- **Summary of Benefits and Coverage (SBC) and Uniform Glossary:** Uniform template that uses clear, plain language to summarize the key features of a plan, such as covered benefits, cost-sharing provisions and coverage limitations.
  - The SBC must include an internet address where an individual can review a Uniform Glossary of medical and insurance-related terms, as well as contact information for obtaining a paper copy.
  - Plans and insurance companies must provide the SBC to participants and beneficiaries with the plan's enrollment or application materials, upon renewal or reissuance of coverage, or within 90 days of special enrollment. The SBC and a copy of the Uniform Glossary also must be provided within 7 business days of a request.
  - A template for the SBC and the Uniform Glossary can be found at [dol.gov/ebsa/healthreform](http://dol.gov/ebsa/healthreform)
- **Marketplace Notice:** Employers subject to the Fair Labor Standards Act (FLSA) must provide a written notice to ALL employees informing them of the existence of the Marketplace, the potential availability of a tax credit and that an employee may lose the employer contribution if the employee purchases a qualified health plan.

# ERISA Non-Discrimination Rules

- Employers are generally free to set the eligibility rules for their group health plans under ERISA, so long as employees are provided sufficient notice of the rules and the rules do not unlawfully discriminate against certain employees.
- Distinctions based on Health Factors are generally prohibited under HIPAA.
- Distinctions among groups of *similarly situated* participants in a health plan must be based on bona-fide employment-based classifications consistent with the employer's usual business practice. Examples of classifications that may be bona fide include:
  - Full-time vs. part-time status
  - Date of hire or length of service
  - Different geographic location
  - Different occupations

# Essential ERISA Plan Elements

- A written plan that describes the benefit structure and guides day-to-day operations;
- A recordkeeping system to track contribution and benefit payments, maintain participant and beneficiary information, and to accurately prepare reporting documents; and
- Documents to provide plan information to employees participating in the plan and to the government.