

ERISA Compliance ▶ *by Chris Bettner*

# It's Only the Application of the Law that Counts

Many people are aware that the Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that regulates group-sponsored benefits, often called "welfare benefit plans." Besides requiring the provision of specific plan features and funding information, the law mandates that employers comply with strict requirements for disclosing plan information to all eligible employees. Knowledge of ERISA often ends there for many employers. That's when it gets downright dangerous for employers that could be out of compliance without realizing it.

It's the application of ERISA that is so important and what will be covered here. ERISA was meant to provide uniformity and protection to employees. It's as simple as that. The Department of Labor (DOL) enforces ERISA compliance. There are severe penalties for employers that do not comply with ERISA laws pertaining to welfare plans. Actual court cases, awards, and DOL fines — ranging from tens of thousands of dollars to hundreds of thousands of dollars — have been levied on employers. ERISA trumps state law. If a beneficiary or participant brings a bad faith claim to court, it can be costly for the employer.

Some people assume that only larger employer groups or publicly traded organizations need to comply with ERISA. But the size of the group and the number or employees is irrelevant. Nearly all corporations, partnerships, proprietorships, and many not-for-profit organizations must comply.

Most health and welfare benefit plans, including health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), dental and vision plans, along with many other types of coverage are ERISA plans.

Some people assume that, if a master contract from the insurance carrier, a certificate of coverage, and a summary of benefits are available to employees or participants, then the ERISA requirement for a plan document or summary plan description is fulfilled. This is not the case.

What is the recommended solution for employers to fulfill these compliance requirements? A wrap document that bundles benefits into one plan or supplemental documents can be much easier for the employer. Some employers may want to bundle two or more ERISA benefits into one plan for compliance purposes. This is referred to as a "mega wrap" using a "mega" or "umbrella" document.

This summary plan description has a laundry list of requirements, which are not all found in a single source. Not only must the employer prepare the summary plan description, but must also deliver it to participants following specific ERISA requirements.

Generally speaking, the summary plan description must be delivered within 90 days of the employee or participant being covered, whether or not they request the summary plan description. An updated summary plan description must be provided to all participants every five years. It can be sent via electronic delivery, first-class mail, or be hand delivery.

Participants include covered employees, terminated COBRA participants, parents or guardians of minors covered under court ordered support, and dependents of a deceased retiree under a retiree plan.

Any employer that is sponsoring health or welfare benefits must determine the best way to document benefits for legal compliance and to communicate effectively with employees. Employers that are sponsoring insured benefits must also worry about missing ERISA provisions in their insurance documentation. Using a wrap document to bundle benefits into one plan or into supplement insurance documents can sometimes be much easier for the employer.

It's important for brokers to encourage their employer groups to be in ERISA compliance and help them find resources to provide the ERISA wrap documents to ensure they that are compliant. ❑

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