

SPD ERISA Requirements- Are you Compliant?

ERISA (Employee Retirement Income Security Act) governs both welfare benefit and retirement plans. This article focuses on the ERISA Summary Plan Description (SPD) and 5500 reporting requirements for welfare benefit plans.

A welfare benefit plan includes any of the following group benefits: health, life, dental, vision, disability insurance plans, flexible spending accounts (FSAs), health reimbursement accounts (HRAs), employee assistance plans (EAPs), and other fringe benefit plans where the employer contributes to the cost.

With the introduction of the Affordable Care Act, ERISA SPD requirements are receiving new attention and enforcement. Employers are required to provide a SPD for each plan or they can use an SPD wrap document to include all welfare benefit plans.

Common Misperceptions

According to Bernard Kears, JD, LLM, founder of ERISA Pros, “The most common misconception held is that an insurance company's Certificate of Insurance is an SPD.” Another common misperception is who is responsible for preparing, filing, and delivering SPDs and Form 5500s. Most employers believe their insurance carrier, accountant, or broker is handling this. However, the employer is solely responsible for ERISA compliance. These misunderstandings can result in costly fines should they be discovered by the Department of Labor (DOL). The penalty for late delivery of SPD can be as much as \$110/day per plan.¹

Who Must Comply with ERISA

ERISA requirements apply to virtually all organizations, except governmental entities and churches regardless of the number of employees or how many employees participate.



SPD Requirements

An employer must have a written Summary Plan Description (SPD) for each separate welfare benefit plan communicating plan rights and obligations to participants and beneficiaries. These documents must contain ERISA wrapper language, along with the certificate of insurance to constitute a SPD.

A wrap SPD may encompass all of your welfare benefit plans under one ERISA plan number and one Form 5500 filing. The SPD must be disclosed to participants informing them of eligibility requirements, benefits, claims and appeals procedures, and rights under ERISA. Other SPD requirements include: the name of the plan, plan sponsor, plan administrator, plan year, employer tax identification number, type of welfare plan, type of administration, summary of the benefits, detailed description of plan benefits for group health plans, provider network availability for group health plans, procedures for Qualified Medical Child Support Orders (QMCCOS), COBRA rights, plan contributions, and claims procedures. A Statement of ERISA Rights is also required.

SPD Delivery

ERISA requires that a SPD is distributed to covered participants within 90 days after becoming newly covered by a plan, or within 120 days of a new plan being established. An updated SPD must be furnished to all covered participants every five years, and every 10 years even if the SPD has not changed. ²

An employer should be prepared to prove it furnished a SPD to participants in a way “reasonably calculated to ensure actual receipt,” using a method “likely to result in full distribution.” Acceptable methods of delivery include: first-class mail, hand-delivery, and electronic distribution, if the employees have access to computers in the workplace and can print a copy easily. ³

Summary of Material Modifications

Any change in your plan that materially affects the design or pricing must be communicated to participants in a Summary of Material Modifications (SMM). The SMM must be distributed to covered participants within 210 days after the end of the plan year in which a material modification has been made. If the material modification is a reduction in group health plan benefits, the SMM must be distributed to participants within 60 days of the adoption date. Examples of SMM include: the elimination of benefits payable, reduction of benefits payable, increases in premiums, deductions, co-payments or coinsurance, or a new requirement (i.e., preauthorization) to obtain services under the plan. There is a penalty of up to \$110/day for not delivering a SMM within 30 days after a Participant or Beneficiary requests it. ²

5500 Reporting

ERISA further requires employers with 100 or more participants to report certain information to the DOL annually on Form 5500.

Form 5500 returns ask for information about the plan, including the plan name, plan year, plan sponsor, plan number, participants, insurance costs, and financial data.

Late filing of form 5500 can result in fines as high as \$1,100 per day.

Summary Annual Report

Once a Form 5500 is completed and filed, you must prepare a Summary Annual Report (SAR) for each of your welfare benefit plans subject to ERISA reporting. The SAR summarizes the Form 5500 information and notifies participants that the Form 5500 has been filed and a copy is available to participants who request a copy. SARs must be distributed to covered participants within nine months after the end of the plan year. A sample SAR format is available from the DOL. A SAR is not required for plans that are not required to file a Form 5500. ⁴

Compliance with ERISA is not optional, it is the law. Employers will avoid costly fines by following the requirements described in this article.

By Ken Spencer, SPHR, MHRM
CEO and HR Coach
HR Service, Inc., (801) 685-8400

References:

1. *ERISA Compliance-Health & Welfare Benefit Plans-SPD Wrap, 5500 Prep Deadlines, DOL Penalty.* Bernard Kears, Sept 6, 2009.
2. *ERISA Reporting & Disclosure Requirements for Welfare Plans.*
3. *ERISA Summary Plan Description (SPD) Document Requirements.*
4. *ERISA FAQs for Health & Welfare Benefit Plans.*

SPD Wrap Document Assistance

For assistance creating SPD Wrap documents, contact HR Service, Inc. at: (801) 685-8400 or Ken@hrserviceinc.com