



***** IMPORTANT BULLETIN *****

TO: All Group Benefit Clients
FROM: Greenberg & Associates Insurance, LLC
DATE: July 13, 2015
RE: ERISA Compliance / Department of Labor ERISA Audits

One of the issues that has come to the forefront in light of the Affordable Care Act, is the Department of Labor's stepped up enforcement activities in the form of ERISA Audits. ERISA is the federal law that regulates employer sponsored benefit plans. If an employer sponsors benefits, ERISA mandates that they provide specific plan documents, information and notifications to their employees. Employers are subject to strict deadlines for employee disclosures and government reporting. Due to the DOL's increase in ERISA audit activities, we feel it is important that you be aware of the increased audit potential so that you can be sure you are fully compliant. While plans with fewer than 100 participants are less likely to be targeted for an audit, they are not immune. Therefore, regardless of plan size, it is important to ensure you are ERISA compliant to avoid any potential penalties for non-compliance.

A key ERISA document is the Summary Plan Description (SPD) (while distributing a formal SPD is always the best approach) all employers should check the documentation distributed to eligible employees to ensure that it includes each of the following items (even if the components of the SPD are spread across multiple documents):

Plan Document and Summary Plan Description * (Wraps all plans for compliance purposes)

- ERISA-Required disclosures and eligibility language, including claims procedures
- Special eligibility conditions, such as measurement and stability periods
- ACA grandfathered disclosure, if applicable
- ACA required notices, including appeals process, dependent coverage of adult children and patient protection information
- Initial COBRA Notice, if applicable
- HIPAA required disclosures, including notice of HIPAA special enrollment rights
- Women's Health and Cancer Rights Act Notice
- Newborns' and Mothers' health protection Act Notice
- Genetic Information Nondiscrimination Act (GINA) and Michelle's Law

* ERISA requires employer sponsored benefit plans to provide plan participants with specific required information. The information required by employers can be found in two separate but complimentary documents. While providing employees or plan participants with these two documents fulfills a fundamental piece of plan compliance, having both documents won't satisfy all of the notices required by law. The first document, typically provided by your insurer or TPA is called a Summary Plan Description or Insurance Certificate Booklet. This document defines benefit plan provisions in specific terms and are usually generic in nature with respect to the employer's plan administration practices. The second document, is an Employer Specific Summary Plan Description which provides details about the employer's plan administration specifics such as eligibility, contributions and funding. This document "wraps" the employer specific details into the plan documents generally provided by the carrier or TPA. An employer can have one wrap document for each benefit or combine all benefits into one document.

There are generally three ways you can go about determining your compliance; evaluate on your own, consult with an attorney or utilize the services of an outside vendor. Since being ERISA compliant is a complex undertaking, many employers turn to either a benefit attorney or outside vendor to assure they are compliant and to keep them compliant on an ongoing basis. With this in mind, following are three resources we have found that can assist you in ERISA Compliance by providing you with information about Employer Specific Wrap documents as well as all of the required employer notifications.

FREE RESOURCE:

Department of Labor/ERISA Compliance (Employer ERISA Compliance Assistance)
http://www.dol.gov/ebsa/compliance_assistance.html

DOL: [Health Benefits Advisor Interactive Website](http://www.dol.gov/elaws/ebsa/health/employer/index.asp) (Step by Step interactive tool to assess which parts of ERISA Compliance you are specifically responsible for)
<http://www.dol.gov/elaws/ebsa/health/employer/index.asp>

DOL: [Reporting/Disclosure Guide For Employee Benefit Plans](http://www.dol.gov/ebsa/pdf/rdguide.pdf) (30 page guide providing specific information employers are required to provide and include in your plan documents – very comprehensive)
<http://www.dol.gov/ebsa/pdf/rdguide.pdf>

BENEFITS ATTORNEY:

Our agency utilizes the services of Iris Tilley who is a local attorney specializing in Employment and Benefits Law. When asked what her firm charges for ERISA services she said “generally speaking” to provide an employer with the Employer Specific ERISA compliant Wrap documents runs \$1,500. In addition, for annual updates required due to plan changes, they generally do NOT charge an additional fee. Exceptions do arise for very complex cases with multiple plans, but, generally once they do your wrap document, you aren’t charged any further. If you’re interested in talking with Iris, her contact information is as follows:

Iris Tilley / Barran Liebman, LLP /Employment, Labor & Benefits Firm
Direct Line (503) 276-2155 / Cell (503) 260-0887 / Fax (503) 274-1212 / Email: itilley@barran.com

OUTSIDE VENDOR:

We have received a lot of information from outside vendors addressing ERISA Audits and Compliance. The company we feel provides the best value for the dollar is Total Administrative Services Corporation (TASC). One of the things TASC offers that most outside vendors do not is a Hold Harmless Provision and \$1 Million Bond. If a client contracts with Task with their ERISA Edge product and are audited and found to be out of compliance, TASC is liable! Attached is their ERISA Edge Offering and Price Sheet. If you are interested in finding out more, following is their contact information:

Jackie Imel / Regional Sales Director Pacific Northwest Region / Total Administrative Services Corp.
Direct Line (608) 268-8879 / Fax (608) 441-3089 / Email: jackie.imel@tasconline.com

Our intent in sending this bulletin is to make our clients, both large and small, aware of the increased ERISA audit activity by the DOL and to encourage action to assure compliance, even if you feel an audit is unlikely. Our intent is to also provide you with some resources to turn to for guidance since this is a complex issue. However, we are not associated with nor can we guarantee any of the services provided by any of the above entities.

Sharon Greenberg & Adrienne Hutchins