

What You Need to Know About ERISA

ERISA (Employee Retirement Income Security Act) is a federal law that governs both Qualified Retirement Plans (Pension, Profit Sharing, and 401(k) Plans) and Welfare Benefit Plans (e.g., group life, health, dental, and disability insurance plans and other fringe benefit plans). ERISA is enforced primarily by the Department of Labor (DOL). This article deals with the basic compliance requirements for Welfare Benefit Plans only.

Almost every employer and employee benefit plan is subject to ERISA including benefits that are not provided through insurance, such as Health Care Flexible Spending Accounts and Severance Pay Plans. Even voluntary insurance programs may be considered ERISA Plans, depending on the extent of an employer's involvement in the plan. There are very few exceptions to ERISA.

An Insurance Certificate is Not an SPD. An employer must have a written Plan Document and Summary Plan Description (SPD) for each separate Welfare Benefit Plan. These documents must contain very specific information. However, insurance company Certificate Booklets (sometimes called Certificates of Insurance, Certificates of Coverage, or just "Certs") provided by an insurance carrier to an employer's employees do not contain all of the required ERISA language. To be in compliance, an employer must add an "ERISA wrapper," to its Certificate of Coverage. Together, the wrapper and the Certificate of Insurance constitute an SPD.

Reporting and Disclosure – ERISA requires employers to disclose certain information to its Participants in an SPD and to disclose changes to the SPD in a Summary of Material Modification (SMM). It even prescribes when and how these documents must be delivered. ERISA further requires employers with 100 or more Participants to report certain information to the DOL annually on Form 5500 and to deliver a summary of its Form 5500 to Participants in a Summary Annual Report (SAR). Even employers with less than 100 Participants may be required to file a Form 5500 if they do not have an SPD containing specific provisions.

Being in compliance is not optional—it's the law! It is mission critical for an employer to be in compliance before trouble arises. By then it is usually too late. An employer can face fines of up to \$1,100/day for each Form 5500 that it files late. The penalty for late delivery of an SPD, SMM, and SAR to a Participant is \$110/day. These penalties apply to each Plan, they are cumulative, and they are not subject to a statute of limitations. For example, an employer that has four separate Plans (life, medical, dental, and disability), which files its Form 5500s just thirty days late, can be fined up to \$132,000! Additionally, not being in compliance with ERISA can expose an employer to unnecessary, time consuming, and expensive employee lawsuits.

Common Misconceptions – The most common misconception held by even experienced insurance brokers, benefits consultants, and Human Resources personnel is that an insurance company's Certificate of Insurance is an SPD. The second most common misunderstanding is that employers with less than 100 Participants are automatically exempt from filing a Form 5500. The third most common misperception is who is responsible for preparing, filing, and delivering SPDs, Form 5500s, etc. Most employers believe that their insurance carrier and/or broker are handling this. However, the employer is solely responsible for ERISA compliance. These misunderstandings can result in some very unhappy employers, should the DOL be the first to advise them that they are not in compliance.