



ERISA Compliance for Health and Welfare Plans

Presented by: Benefit Team Insurance Services

Introduction >



Agenda

- Introduction to ERISA
- Covered Employers and Plans
- Plan Document Requirement
- Reporting and Disclosure
- Fiduciary Rules
- Enforcement

What Is ERISA? 



ERISA

Employee Retirement Income Security Act

- Enacted in 1974
- Sets minimum standards for pension and welfare plans provided by employers to protect employees

Title I: Protection of Employee Benefit Rights

- Part 1: Reporting and Disclosure
- Part 4: Fiduciary Responsibility
- Part 5: Administration and Enforcement
- Part 6: COBRA Continuation Coverage and Additional Standards for Group Health Plans
- Part 7: Group Health Requirements (HIPAA, NMHPA, MHPAEA, WHCRA)

ERISA Preemption

- ERISA will generally preempt state laws that relate to ERISA plans
- State insurance laws continue to apply to insurers
 - State laws regarding insurance policies will not be preempted
 - Insured ERISA plans indirectly subject to state law
- ERISA plans cannot be deemed to be insurance companies
 - Self-funded ERISA plans cannot be regulated by state insurance laws

Who Must Comply with
ERISA? 

➤ Employers Subject to ERISA

Most private sector employers are subject to ERISA

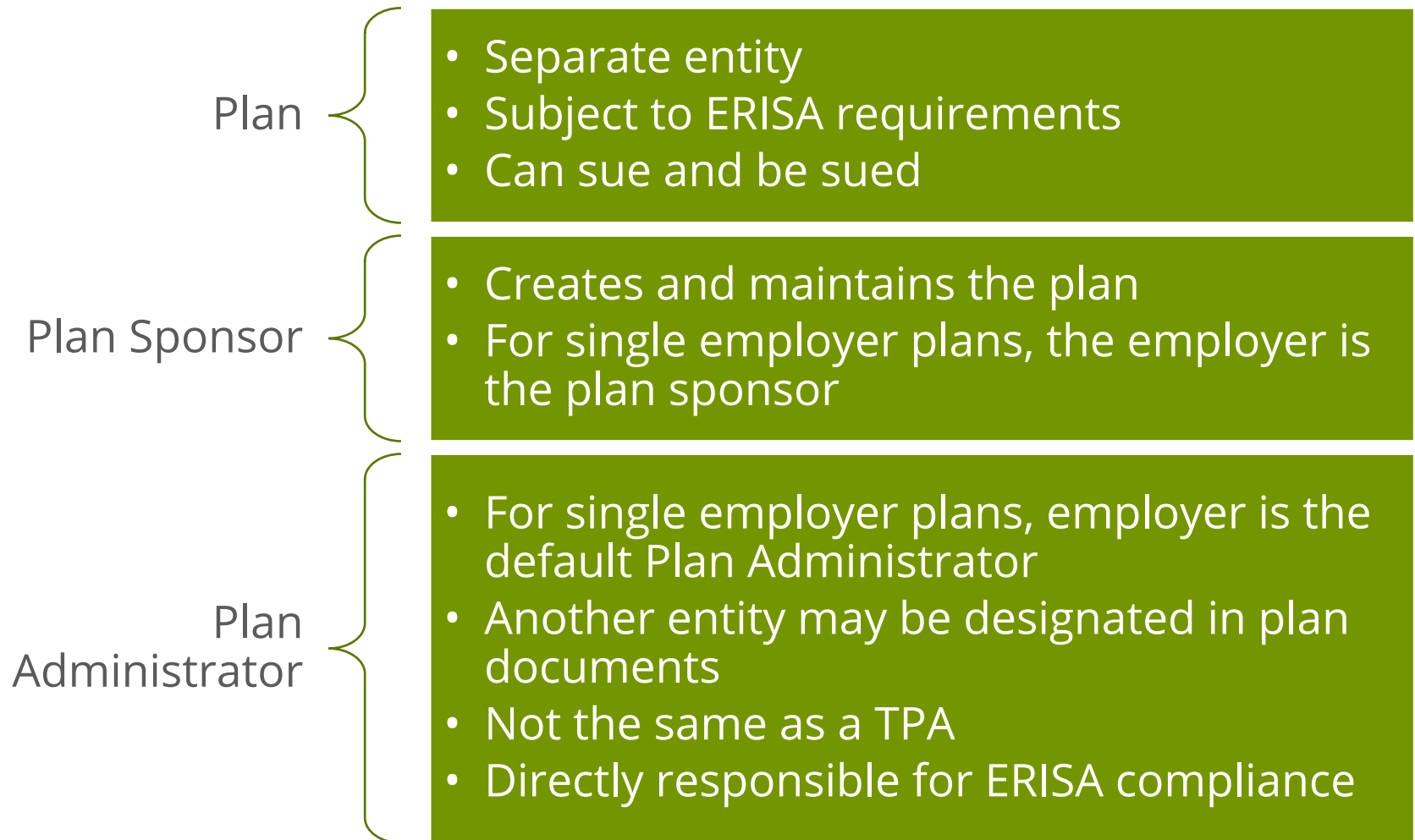
Subject to ERISA

- Corporations
- Partnerships
- Sole proprietorships
- Nonprofit organizations

Exempt from ERISA

- Governmental plans
- Church plans

Key Actors



Which Plans Are
Subject to ERISA?



Employee Welfare Benefit Plans

A plan, fund or program



Established or maintained by an employer



For the purpose of providing welfare benefits to participants and beneficiaries

Welfare Benefits

- Medical, surgical or hospital benefits
- Sickness, accident, disability, death or unemployment benefits
- Vacation benefits
- Apprenticeship or other training benefits
- Day-care centers
- Scholarship funds
- Prepaid legal services
- Holiday and severance benefits
- Housing assistance benefits

Statutory Exemptions

- Governmental and church plans
- Programs maintained solely to comply with state-law requirements for:
 - Workers' compensation
 - Unemployment compensation
 - Disability insurance
- Plans maintained outside of the U.S. for nonresident aliens

Payroll Practices

Payments that are made as an employer's normal "payroll practice" are exempt from ERISA



Includes payment of:

Wages, overtime pay, shift premiums and holiday or weekend premiums

Sick-pay or income replacement benefits

Vacation, holiday, jury duty and similar pay



Amounts must be paid out of employer's general assets to current employees

Voluntary Plans

Certain “voluntary employee-pay-all arrangements are exempt from ERISA

Exempt arrangements

- Employer allows insurance company to sell voluntary policies to interested employees
- Employees pay full cost of coverage
- Employees pay premiums through payroll deductions
- Employer forwards deductions to the insurer

Restrictions

- Employer may not contribute to cost of coverage
- Insurer may not pay the employer
- Employer may not endorse the program

Plan Document

Requirement

Plan Document

- Every ERISA plan must have a **written plan document** describing the benefits provided
- An ERISA plan may exist without a written plan document but will be out of compliance
- **Wrap document** for insured benefits
 - Insured benefits controlled by terms of contracts/policies
 - Contracts/policies will not contain all provisions required for ERISA plan document
 - Wrap document is combined with contract/policy to provide missing terms

Plan Document Provisions

The plan document should address:

- Benefits and eligibility
- Funding of benefits
- Treatment of insurance refunds and rebates
- Standard of review for benefit decisions
- Designation of named fiduciary
- Plan amendment and termination procedures
- Required provisions for group health plans
- Other substantive provisions applicable to certain plans (such as subrogation and reimbursement clauses and coordination of benefits provisions)
- Procedures for allocating and delegating plan responsibilities

Reporting and Disclosure



Summary Plan Description (SPD)

- Document used to communicate plan benefits, rights and obligations
- Terms may be enforced if more beneficial to participants than the plan document
- Most plans must have an SPD
 - Very limited exceptions apply
 - No exception for small plans
- Provided by Plan Administrator
 - Even if another entity drafts the SPD

SPD Distribution

Deadlines

- Provide within 90 days after participant becomes covered under the plan
- Updated SPD must be provided every 5 years (10 years if no changes)

Approved Distribution Methods

- First-class mail
- Hand delivery
- Electronic distribution if certain requirements met

SPD Content

ERISA provides detailed content requirements for welfare plan SPDs

- Plan identifying information
- Description of benefits and eligibility rules
- Statement regarding circumstances causing loss or denial of benefits
- Description of amendment, termination and subrogation provisions
- Information regarding contributions and funding
- Claims procedures
- Statement of ERISA rights
- Additional group health plans requirements
- Prominent offer of assistance in a non-English language (if required)

Insured plans: insurance booklet will usually **not** meet requirements
Solution: **wrap SPD document** that contains ERISA elements



Summary of Material Modifications (SMM)

- Material changes to information contained in SPD must be communicated to plan participants
- Plan Administrator can use SMM instead of issuing a new SPD
- Deadlines:
 - 210 days after the end of the plan year in which a modification is adopted
 - If change is a material reduction in group health plan benefits or services, deadline is 60 days after date of adoption
 - ACA imposes 60-day advance notice rule for midyear changes that affect SBC

➤ Summary of Benefits and Coverage (SBC)

Short summary of benefits and coverage under the plan required by the ACA



Must be provided by Plan Administrator and insurer

Non-duplication rule allows one party to distribute SBC

At enrollment, re-enrollment and upon request



Must provide 60 days' advance notice of any material modification of plan terms or coverage not reflected in most recent SBC

Participant Requests for Documents

- The Plan Administrator must furnish certain documents upon written request by a participant or beneficiary
 - Latest SPD, SMMs and annual report
 - Any bargaining agreement, trust agreement or contract
 - Any other “instrument under which the plan is established or operated”
- Documents must also be available at plan office
- Copies must be provided within 30 days (reasonable copying fees may be charged)
- Penalties of up to \$110/day may be assessed for failing to respond to request



Form 5500 Reporting

Many ERISA plans must report plan information to the DOL each year using Form 5500

Significant penalties

- Up to \$2,233/day for missing or incomplete 5500s
- Criminal penalties for willful failures
- Voluntary correction program available

Exemptions

- Full or partial exemption
- Depend on size and funding method

➤ Form 5500 Exemptions

Small welfare plans – full exemption

- Fewer than 100 covered participants at the beginning of the plan year
- Must be unfunded (benefits paid from general assets of employer) or insured (benefits paid through an insurance policy that is not stop-loss insurance) or a combination
- Can accept participant contributions if conditions met

Large welfare plans – partial exemption

- Exempt from providing some of the required information
- If unfunded, insured or a combination
- Financial information (Schedule H) and accountant's opinion

➤ Form 5500 Basics

Deadline

- Last day of the 7th month after plan year ends (July 31 for calendar year plans)
- Automatic 2 ½ month extension available

Plan Administrator

- Is responsible for signing and filing 5500
- Generally the plan sponsor unless another entity is designated

Electronic Filing

- All Form 5500s must be filed electronically using EFAST2
- Can use DOL web application or third party software

Delinquent Filer Program

DFVCP

- Delinquent Filer Voluntary Correction Program
- Available if issues not identified by DOL

Correcting Form 5500 failures

- File a completed Form 5500 for the year
- Pay a reduced penalty

Penalties

- Small plans: \$10/day up to \$750 per year (\$1500 for multiple years)
- Large plans: \$10/day up to \$2,000 per year (\$4,000 for multiple years)

Summary Annual Report (SAR)

- Plans required to file Form 5500 must provide participants with a summary of the information in the Form 5500
- SAR contents (if reported on 5500):
 - Funding and insurance information
 - Basic financial information
 - Rights to additional information (full annual report)
 - Offer of assistance in non-English language (if required)
- Must be provided within 9 months of the end of the plan year
 - If extension granted for 5500, within 2 months of extension period

Recordkeeping Rules

- ERISA plans must maintain records documenting information that is required by the plan's Form 5500
- Recordkeeping rule applies to plans that are exempt from filing the Form 5500
- Records must be maintained for at least six years after the Form 5500 filing date

Fiduciary Responsibility >

ERISA Fiduciaries

Anyone performing fiduciary functions is an ERISA fiduciary

Fiduciary
functions

- Exercising discretionary authority or control regarding management of an ERISA plan
- Exercising any authority or control over management or disposition of plan assets
- Rendering investment advice for a fee
- Having discretionary authority or responsibility in administration of the plan

Fiduciary Duties

- **Duty of undivided loyalty**
 - Act solely in the best interest of plan participants and beneficiaries
- **Exclusive benefit rule**
 - Use plan assets for the exclusive purpose of paying plan benefits or reasonable expense of plan administration
- **Prudent person standard**
 - Act with the care, skill, prudence and diligence that a prudent person in similar circumstances would use
- **Duty to diversify investments**
 - Diversify the plan's investments to minimize the risk of large losses
- **Duty to act in accordance with the documents governing the plan**

Fiduciary Issues

Settlor Functions

- Fiduciary duties do not apply
- Include business decisions such as amending and terminating plans

Delegating Fiduciary Duties

- Duties can be delegated to others if permitted by the plan
- Plan sponsor retains ultimate responsibility

Fiduciary Breaches

- Personal liability for damages or profits
- Special fiduciary penalties assessed by DOL
- Removal
- Criminal penalties

ERISA Enforcement >

ERISA Enforcement

- The U.S. Dept. of Labor (DOL) enforces ERISA Title I
- Primary enforcement responsibility held by Employee Benefits Security Administration (EBSA)
- ERISA violations can be costly for employers
 - DOL investigations
 - DOL enforcement actions
 - DOL penalties
 - Employee lawsuits

➤ Enforcement Statistics

During the DOL's 2018 fiscal year



EBSA oversaw 2.2 million health plans, and a similar number of other welfare plans

EBSA closed 1,329 civil investigations. Of these, **64.7 percent** triggered monetary results or other corrective action

EBSA filed 56 civil lawsuits and closed 268 criminal investigations. EBSA's criminal investigations led to the indictment of 142 individuals

Questions? 

Thank you!

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