

A photograph of three business professionals in a modern office setting. Two men in suits are walking towards the right, and a woman in a light-colored business suit is walking away from them towards the left. The office has large windows and a grid-like pattern on the wall.

BECOMPLIANT ✓

ERISA COMPLIANCE 101

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ERISA Defined

- **Employee Retirement Income Security Act (ERISA)**



- Federal Law Enacted in 1974
- Title 1 is part of U.S. labor laws; governs the structure of employee benefits Plans.
 - Requires detailed disclosure to covered individuals (applies to all Private Sector Employers regardless of size).
 - Requires detailed reporting to the government (generally Plans with 100 or more Participants).
 - Imposes strict fiduciary code of conduct on those who sponsor and administer ERISA Plans.
 - Imposes federal mechanism for enforcing rights and duties with respect to ERISA Plans and preempts a large body of state laws.

Why are so many employers out of Compliance?

- Overall Lack of Awareness in Marketplace
 - Carrier Documents thought to be Compliant
 - Confusion due to a Complexity of the Regulations
 - Prior Limited Enforcement
-
- However, Compliance is “Not An Option”...It’s the Law!
 - Statistics are that 90-95% of Employers have at least one violation of ERISA regulations.





What is a "Plan" under ERISA?

- A Welfare Benefit Plan must be:
 - A Plan, fund, or program
 - Established or maintained by an employer
 - Established to provide welfare benefits to Participants and beneficiaries



ERISA Titles

- “Title 1” Applies to H&W benefits
- 7 Parts (5 parts apply to H&W benefits)
 - Part 1: Reporting & Disclosure
 - Part 4: Fiduciary responsibility
 - Part 5: Administration & Enforcement
 - Part 6: COBRA and additional standards for group health Plans
 - Part 7: HIPAA, Newborn & Mothers Health Protection, Mental Health Parity Act, Women’s Health and Cancer Rights Act (WHCRA)



Employers Subject to ERISA

- Private-Sector Employers
 - Corporations
 - Partnerships
 - Sole Proprietorships
 - Non-Profit Organizations
 - Unless Exempt under 501a as Governmental entity



Safe Harbors of Statutory and Regulatory Exemptions

- Government, Church, and Other
 - Governmental and church Plans are exempt from ERISA
 - Programs maintained solely to comply with state-law requirements for
 - Workers compensation
 - Unemployment compensation
 - Disability insurance
 - Plans maintained outside the U.S. for non-alien



Benefits Subject to ERISA

- Health, Dental and/or Vision Insurance or Plans
- Health Flexible Spending Accounts (separate Plans)
- Health Reimbursement Arrangements (separate Plans)
- Accidental Death & Dismemberment Insurance
- Group Term Life Insurance
- Short Term and Long Term Disability
- Severance Insurance Policy
- Wellness providing medical care
- Employee Assistance Programs providing counseling
- Group Travel Accident Insurance benefits
- Voluntary Benefits



Voluntary Benefits Safe Harbor

- Voluntary Plans
 - The employee pays the entire premium; the employer does not contribute
 - Participation by the employees is completely voluntary
 - Employer has minimal involvement in plan operations and does not “endorse” the Plan
- Activities considered an endorsement of the Plan:
 - The employer urges or encourages employee participation in the program
 - States in communications that the employer is “enthusiastic” about the program
 - States that the Plan is part of the employer’s benefit package



Polling question

What does the acronym ERISA stand for?



Key ERISA Requirements

- Plan document must exist for each Plan
- Plan terms must be followed and strict fiduciary standards adhered to
- Fidelity bond must be purchased to cover every person who handles Plan funds
- Summary Plan Description (SPD) must be furnished **automatically** to Plan Participants
- Summary of Material Modification (SMM) must be furnished automatically to Plan Participants when a Plan is amended within 210 days after end of plan year.

Required Disclosure: What/When

Summary Plan Description (SPD) must be provided:

- Within 90 days of start of coverage to a new participant.
- Within 120 days of a new plan first becoming subject to ERISA.

Summary of Material Modification (SMM) must be provided:

- Within 210 days after plan year end of the adopted modification (even if retroactive).
- If there **has been a material modification** then within 5 years of the material modification.
- If there **has not been a material modification** then within 10 years of the last SPD.

Summary Annual Report (SAR) must be provided:

- No later than 9 months after the close of the plan year.

Required Disclosure: How?

SPDs, SMMs and SARs must be furnished in a way “reasonably calculated to ensure actual receipt by all participants covered under the Plan.”

Approved methods include:

- First, second or third class mail
- Special insert into a company or union publication
- In hand delivery

SPDs, SMMs and SARs can be disclosed electronically to all recipients if:

- Notice of the significance of the document is provided to each recipient
- A paper version is made available on request at no charge
- Any confidential information is protected
- The participant has work related computer or consents

Responsibility for disclosure remains with the plan administrator.



Sources:

- ERISA Sections 104(b)
- DOL Reg. Sections 2520.104b-1(b)(1)
- 67 Fed Reg. 17263 (Apr. 9, 2002)



Required Disclosure: Who

- Who Must be Provided an SPD?
 - Must be furnished to Participants covered under ERISA Welfare Plan, not required to furnish beneficiaries
 - Must be furnished to COBRA qualified beneficiaries, parent or guardian under a QMCSO, and to spouse or dependent of deceased retiree who remains entitled to benefits



Other Disclosures to Participants and Beneficiaries

- Providing Copies of Documents on Written Request
 - Upon written request by a participant/beneficiary, the ERISA Plan Administrator must furnish the following within 30 days of request:
 - Copy of latest SPD and SMM,
 - Latest annual report,
 - Any terminated report,
 - Bargaining agreement,
 - Trust agreement,
 - Any contract,
 - Any other “instrument under which the Plan is established or operated”
- Penalties
 - Penalties of \$110 per day may be assessed for each day after the deadline that a Plan Administrator does not respond
 - May charge reasonable amount for furnishing documents, not to exceed \$0.25 per page



Examples of Penalties

- DOL (Department of Labor)
- Failure to comply with ERISA's requirements can be quite costly via DOL enforcement actions
- Example Government Penalties for Non-Compliance:
 - 1) \$86,500 – Failure to File Complete and Accurate IRS Form 5500
 - 2) \$241,000 – Failure to Provide SPD to Participant
 - 3) \$10,780 - Failure to Provide SPD to Participant
 - 4) \$13,750 - Failure to Provide SPD to Participant
 - 5) \$8,910- statutory penalties failure to and delay in providing SPD



Annual Form 5500 Reporting

- Filing Form 5500 with DOL
 - Unless exempted (small unfunded plans), Plan administrator of an ERISA Plan must report specified information each Plan Year using Form 5500
 - Reporting obligation applies to each ERISA Plan an employer sponsors
 - The DOL can assess a penalty of up to \$2,259 per day for a late 5500 filing per plan per plan year
 - The DOL has a delinquent filer voluntary compliance program (DFVC program) which caps penalties



IRS Form 5500 Exemptions

- Small unfunded or insured plans are completely exempt.
 - Employer must have fewer than 100 covered Participants at the beginning of the Plan Year.
 - Only Participants actually covered under Plan are counted.
 - Includes COBRA qualified beneficiaries and retirees covered in the Plan
 - Does not include covered spouses and dependents.



IRS Form 5500 Exemptions (cont'd)

- DOL Reg. §2520.104-20 also provides a complete Form 5500 reporting exemption for certain **small insured welfare plans**. **Remaining requirements of the small insured plan exemption, specifically that:**
 - benefits must be paid exclusively through insurance policies;
 - premiums must be paid directly by the employer from general assets or partly from Participant contributions; and
 - insurance refunds to which contributing Participants are entitled must be refunded within three months,
 - Participants must be informed, when they enter the plan, about the plan's provisions for allocating refunds.
 - Large plans need only reimburse any refunds to EE within three months to avoid filing Schedule H.



DOL Increased Fines & Penalties for 2021

- *The Department of Labor published in the Federal Register on June 30, 2016 , an interim final rule to adjust for inflation the civil monetary penalties and final rule January 12, 2017 enforceable by the Department of Labor.*
- *The rule's catch-up adjustments apply to penalties assessed after August 1, 2016 , January 12, 2017 January 2, 2018, January 23, 2019, January 15, 2020 and on or after January 15, 2021, whose associated violations occurred after November 2, 2015, the enactment date of the 2015 Inflation Adjustment Act Text.*
- Subject to change each January.
- **Adjustment effective January 15, 2021 as published in Federal Registry.**



Highlights of DOL Penalty Adjustments

ERISA Penalty Statute	Description of ERISA Violations Subject to Penalty	Penalty Amount effective Jan. 2, 2108	Penalty Amount effective Jan. 23, 2019	Penalty Amount effective Jan. 15, 2020	Penalty Amount effective Jan. 15, 2021
ERISA § 502(c)(2)	Failure or refusal to file <u>annual report</u> (Form 5500)	Up to \$2,140/day	Up to \$2,194/day	Up to \$2,194/day	Up to \$2,259/day
ERISA § 502(c)(6)	Failure to furnish <u>information requested</u> : <ul style="list-style-type: none"> by employee: by (DOL): 	Up to \$114/day \$152/day Up to \$1,527/request	Up to \$117/day \$156/day Up to \$1,566/request	Up to \$117/day \$156/day Up to \$1,566/request	Up to \$110/day \$161/day Up to \$1,613/request



Highlights of DOL Penalty Adjustments

ERISA Penalty Statute	Description of ERISA Violations Subject to Penalty	Penalty Amount effective Jan. 2, 2018	Penalty Amount effective Jan. 23, 2019	Penalty Amount effective Jan. 15, 2020	Penalty Amount effective Jan. 15, 2021
ERISA § 502(c)(9)(A)	Failure by an employer to <u>inform employees of CHIP coverage</u> opportunities each employee a separate violation.	Up to \$112/day	Up to \$117/day	Up to \$119/day	Up to \$120/day
ERISA § 715	Failure to <u>provide Summary of Benefits Coverage</u> under Public Health Services Act section 2715(f).	Up to \$1,105/failure	Up to \$1,156/failure	Up to \$1,176/failure	Up to \$1,190/failure



Highlights of DOL Penalty Adjustments

ERISA Penalty Statute	Description of ERISA Violations Subject to Penalty	Penalty Amount effective Jan. 2, 2018	Penalty Amount effective Jan. 23, 2019	Penalty Amount effective Jan. 23, 2020	Penalty Amount effective Jan. 23, 2021
Section 502(c)(4)	Per day for failure to disclose certain documents upon request under ERISA 101(k) and (l); Failure to furnish notices under 101(j) and 514(e)(3)—each statutory recipient a separate violation.	\$1659/day	\$1736/day	\$1767/day	\$1788/day



DOL ERISA Investigations

- Reasons for initiating investigations
 - Participant complaints to Office of Participant Education
 - Referrals from other regulators (e.g., SEC, IRS)
 - Enforcement initiatives (National Enforcement Projects)
 - Form 5500 filings / Employers having 100 or more EE's
- Procedure for DOL investigation
 - Initial Letter (Document Request or Appointment Letter)
 - Document Production and On-Site Interviews
 - Closing Letter:
 - (1) No DOL action to be taken
 - (2) "Voluntary Compliance" notice, or
 - (3) Litigation letter



Reporting and Excise Taxes for Health Plan Non-Compliance

- Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code
 - IRS final regulations require employers to self-report violations of these rules and pay related excise taxes.
 - Must report health plan compliance failures annually on IRS Form 8928.
 - Violations COBRA, HIPAA, GINA, WHCRA, MHPAEA, Newborn & Mothers ACT, etc., can result in excise taxes of \$100 per day per individual affected.



Polling Question

What agency governs ERISA Compliance?



Health Care Reform's Impact on Benefits Plans



Medical Loss Ratio (MLR)

- **Patient Protection & Affordable Care Act (PPACA)** requires insurers spend a certain percentage of premium dollars on healthcare-related costs
 - 85% for large group Plans and 80% for small and individual market
- Insurer does not meet MLR standard required to provide an annual rebate to each enrollee
- The DOL has determined the rebates are Plan assets



Medical Loss Ratio (MLR)

- If Plan Document/SPD is silent, 100% of the rebate falls under Plan assets
- By adding the terms via the ERISA Plan Document Amendment/Summary of Material Modification (SMM), employer can retain a prorated portion of the rebate equal to the percent of premium the employer paid



ACA and ERISA SPD

- The ACA document amendment applies to those employers who are deemed an **Applicable Large Employer (ALE)** under the Affordable Care Act.
- Employers determined to be ALEs are subject to the employer shared responsibility mandate ("Play or Pay") under Internal Revenue Code (IRC) §4980H.



ACA and ERISA SPD

- ALEs must track employee and health coverage information throughout the year and report to both the IRS and employees following the close of the plan year . Penalties apply to employers with 50+ employees.
- Hours are tracked either monthly or during a measurement period. The measurement period is period of time set by the employer (using the guidelines set forth in ACA) over which employees hours are tracked.
- Employers must advise employees of the tracking method being used (monthly or measurement) and tracking method must be included in ERISA SPD.



 US Department of Labor

Text A⁺ | A⁻

DATA ENFORCEMENT



HOME

SEARCH

DATA CATALOG

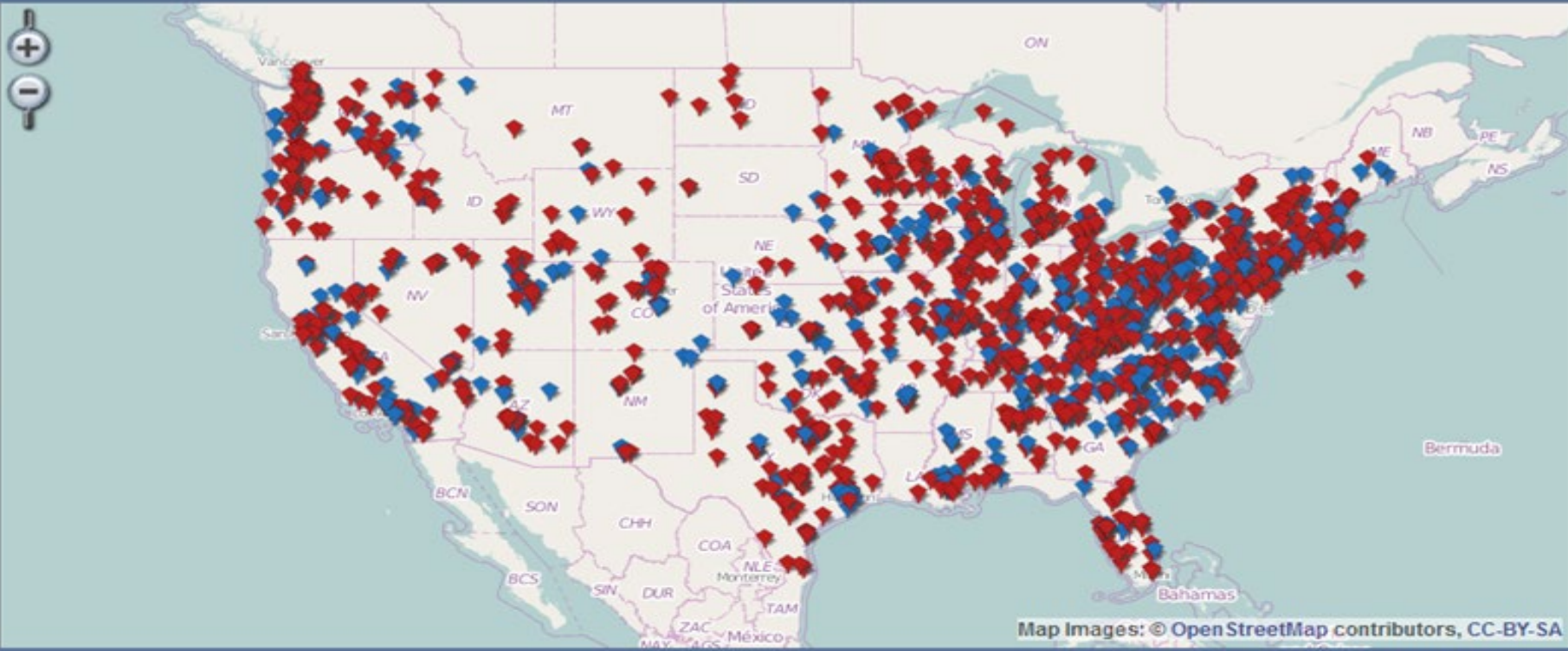
LABS

AGENCY TOOLS

FAQ

WHAT'S NEW

CENSUS DATA



AGENCIES & VIEWS

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Questions?

Thank you!