



# ERISA – Employer Documentation & Distribution Requirements

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*Maricia M. Meyer*

*Director, HR Compliance Services – ETC HR, LLC*



# Disclaimer

*The materials and information contained herein are intended only to provide general information and in no way constitute legal advice. If you have specific questions or concerns, please consult legal counsel.*

*Finally, this presentation is current as of the date of this presentation, and the information contained herein is subject to change.*



ERISA –  
Employee  
Retirement  
Income  
Security Act

What is it?

# Key Players

ERISA Plan:  
Employee Welfare  
Benefit Plan

Plan Sponsor:  
Employer

Plan Administrator:  
Employer

Participant:  
Covered Employees &  
Former Employees

Beneficiaries:  
Covered Spouses &  
Dependents

Named Fiduciaries, Plan  
Administrator, Trustee,  
Certain Service  
Providers

# Employee Welfare Benefit Plans

Plan, Fund, or Program

Established or maintained by an Employer

For the purpose of providing specific benefits

Through the purchase of insurance or otherwise

To participants and beneficiaries

# Benefit Welfare Plans Typically Subject to ERISA

Medical, Dental  
& Vision  
Insurance

Health FSA

Prescription  
Drug plans

AD&D

STD & LTD

Group Term  
Life



# ERISA's Primary Compliance Obligations

# Primary ERISA Plan Sponsor Responsibilities

## Paying Attention to Details

Complying with the written plan document requirement and administering the plan in accordance with its terms

## Keeping Participants Informed

Complying with participant disclosure requirements

## Keeping DOL Informed

Complying with 5500 Filing Requirements (unless exempt)

## Handling Plan Assets

Complying with ERISA's trust and exclusive benefits requirements



# ERISA's Written Plan Document Requirement

## What is the purpose behind the written plan document requirement?

- Supreme Court: Allows employees to determine what their rights and obligations are under the plan. *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995).
- 8<sup>th</sup> Circuit: Provides notice to plan participants of the benefits to which they are entitled and their obligations under the plan; and provides the plan administrator guidelines by which to make decisions. *Wilson v. Moog Auto., Inc. Pension Plan*, 193 F.3d 1004 (8th Cir. 1999).

## What must the ERISA plan document look like?

- ERISA does not dictate what constitutes a plan document, but it does mandate certain provisions be included (e.g., plan terms and conditions, named fiduciary, amendment procedures, and the basis upon which payments are made to and from the plan).
- The answer generally depends on whether the plan(s) are fully insured v. self-insured and whether the plan sponsor bundles any benefits together under one plan.

# Plan Documents & Summary Plan Descriptions

## **Plan Documents:**

- A well-drafted plan document typically specifies things such as eligibility requirements, plan participation rules and the length of coverage. It also contains important statements by the employer such as the employer's right to amend or terminate the plan at any time.

## **Summary Plan Description (SPD):**

- The SPD is the tool by which the plan notifies the participants of the plan's terms, such as plan eligibility, funding contributions and benefits.

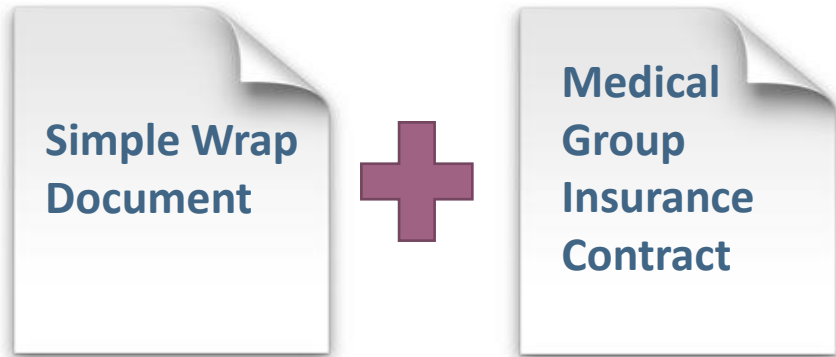
# ERISA Wraps

- A wrap document supplements the carrier or TPA-provided documentation to ensure that all of the ERISA “bells and whistles” are included in the plan materials.



# Plan Document Examples

## Simple Wrap Plan for Fully Insured Plan



## Mega Wrap Plan Bundling Multiple Benefits



# ERISA Participant Disclosure Requirements

ERISA Disclosure Document	To Whom	Due Date
Plan Document	Participants and Beneficiaries	Within 30 days of written request
Summary Plan Description (SPD)	Participants	<ul style="list-style-type: none"><li>- Within 90 days for newly covered participant</li><li>- Within 120 days for new plans</li><li>- Every 5 years if material changes made</li><li>- Every 10 years if no material changes</li></ul>
Summary of Material Modification (SMM)	Participants	<ul style="list-style-type: none"><li>- Within 210 days after the end of the plan year in which a material change is adopted</li><li>- Within 60 days after a material reduction in covered services/benefits is adopted</li></ul>
Summary Annual Report (SAR)	Participants	Within 9 months after the close of the plan year, or 2 months after due date for filing Form 5500 (with approved extension).
Summary of Benefits & Coverage (SBC)	Participants and beneficiaries	<ul style="list-style-type: none"><li>- With enrollment materials and upon renewal/reissuance of coverage</li><li>- Within 90 days for special enrollees</li><li>- Within 7 days upon request</li><li>- Within 60 days prior to modification impacting SBC becomes effective</li></ul>

**Source:** EBSA, available at: <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/rdguide.pdf>



# The Cost of Non-Compliance

- \$1,087 penalty per failure to provide SBC
- No specific penalties for failure to maintain written plan document or distribute SPD, SMM, or SAR, but...
  - \$110 per day penalties for failure to respond to written requests by participants & beneficiaries (willful ERISA violations can carry up to 10 years in prison and a \$100,000 fine)
  - **Subject to lawsuit** to enforce written plan document and disclosure requirements
  - Without a formal plan document, benefits lawsuits can be based on past practice (difficult to prove plan terms and enforce plan provisions) & lose more deferential standard of review.
  - Failure to furnish SMM may impact validity of plan amendment





# Questions?





# Thank you for your time

Additional questions?

Lisa Davis: [lisa@eligibilitytrackingcalculators.com](mailto:lisa@eligibilitytrackingcalculators.com)

Sharon Alt: [sharon@eligibilitytrackingcalculators.com](mailto:sharon@eligibilitytrackingcalculators.com)

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