Wrap Documents and the Written Plan Document Requirement

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for private-sector employee benefit and retirement plans including reporting and disclosure. A complete plan document and Summary Plan Description (SPD) is required for welfare plans to explain to participants their rights and benefits offered under the welfare benefit plan. The SPD must be written in a manner expected to be understood by the average plan participant. A plan may combine the plan document and SPD into one document, if it complies with the plan document and SPD content requirements and clearly states that it is intended to serve as both the plan document and SPD.

A wrap document can serve several purposes. The two main purposes are: 1) to have a fully compliant plan document and SPD for all health and welfare benefit plans sponsored by the employer; and (2) to consolidate (or bundle) plans into one Form 5500, rather than separate filings for each benefit plan.

Plan Document and SPD Requirements

Employers who have a fully insured plan with an insurance carrier do not generally have an ERISA compliant plan document or SPD. If the benefits are subject to ERISA, they must be fully described in a written plan document. The plan document should describe the terms of the plan and the plan’s operation and administration. Many of the ERISA required terms are not routinely found in Certificates of Insurance issued by insurance carriers, such as:

- Complete eligibility provisions, including leaves of absence, extensions of coverage, classes of eligible employees, the waiting period and measurement/stability provisions as permitted by the Affordable Care Act
- Treatment of insurance rebates
- Statement of ERISA rights
- Complete COBRA provisions

The Department of Labor (DOL) regulations require certain basic information to be included in the SPD. The following includes some (but not all) of the items:

- Plan identifying information
- Description of plan eligibility provisions
- Description of plan benefits
- Circumstances that may cause a loss or denial of plan benefits
- Description of plan amendment and termination provisions
- Plan subrogation and reimbursement provisions
- Plan contributions and funding
- Claims procedures
- Discretionary authority
- Statement of ERISA rights

ERISA governed plans are subject to the SPD requirement regardless of the number of employees participating in the plan. Plans sponsored by churches and non-federal governmental entities are exempt from ERISA, unless they have otherwise opted into ERISA. Even though these entities may be exempt, a complete plan document is recommended, so there are no discrepancies in benefits or administration in the event of a lawsuit. Courts are
likely to apply the less favorable “de novo” standard of review and are more likely to side with the participant when an informal or incomplete plan is presented in a lawsuit over a benefit claim.

**Combined Plans Form 5500**

An employer may choose to combine its welfare benefits under a single plan document, creating one large “mega wrap/bundled” plan. For larger employers, the decision on whether to bundle welfare benefits together may simplify the annual reporting. Employers who are subject to the Form 5500 reporting requirement will need to file a separate Form 5500 for each benefit plan covering 100 or more participants at the beginning of the plan year, unless there is a wrap document to bundle the various plans into one “mega” plan. For smaller plans, not subject to the Form 5500 requirement, it may be of benefit to them to have each benefit offered as a separate plan, so they may qualify for the Form 5500 exemption. Therefore instead of a mega wrap to bundle benefits into one plan, an SPD may be drafted for each benefit plan.

**Distribution of SPD**

ERISA requires that plan documents, including SPDs, must be furnished to participants and beneficiaries “in a manner reasonably calculated to ensure actual receipt of the material by the participant”. The following are examples of acceptable methods of delivery:

- In-hand delivery to employees (another method should be considered for qualified beneficiaries) at their worksite (merely posting information in a common area is not acceptable)
- Included within a periodical distributed to employees (for example, a union newsletter or company publication)
- U.S. mail
- Electronic media (DOL regulations include a safe harbor provision applicable to electronic delivery of SPDs)

ERISA does not require that an SPD be provided in a non-English language, although in some instances a notice must be prominently displayed that provides that assistance in a non-English language is available.

**Potential Penalties**

Under ERISA, the plan administrator (generally the employer) is legally responsible for making sure the SPD is provided. Participants must receive an SPD within 120 days of the plan becoming subject to ERISA (for a new group plan), within 90 days of enrollment for new participants and within 30 days of a participant’s written request for an SPD. While there are not specified penalties for the failure to prepare a written plan document or SPD, other failures are generated by the inability to provide an SPD upon request by a participant, beneficiary or the DOL. The penalties are up to $110 per day, if the document is not provided within 30 days after an individual’s request. In addition, an employer without a wrap document to bundle plans may not be filing the appropriate number of Form 5500’s, thereby subjecting the plan sponsor to penalties for failure to file complete reports. These penalties may be up to $1,100 per day starting from the date of the administrator’s failure to file the Form 5500.