

ERISA Compliance for Health Plans

The [Employee Retirement Income Security Act](#) (ERISA) is a federal law that sets minimum standards for group health plans. Among other things, ERISA generally imposes five key requirements on group health plans:

- Plan Document Requirement
- Summary Plan Description (SPD) Requirement
- Form 5500 Requirement
- Summary Annual Report (SAR) Requirement
- Fiduciary Requirements

Plan Document Requirement

All ERISA-covered benefit plans, including group health plans and other employee benefit plans, must be administered in accordance with a written plan document. ERISA does not require that a plan document be in any particular format. However, there are several topics that must be addressed in the written plan document. For example, the plan document must address:

- Benefits and eligibility;
- Funding of benefits;
- Procedures for allocating and delegating plan responsibilities;
- Plan amendment and termination procedures;
- Designation of a named fiduciary; and
- Required provisions for group health plans, such as COBRA rights and HIPAA compliance.

Many employers assume that insurance contracts for fully insured products are written plan documents. Insurance companies, however, draft their contracts to comply with state insurance laws, and, as a result, the contracts do not contain many of the ERISA-required provisions (for example, while carrier certificates include detailed benefit information, they generally do not designate plan fiduciaries or provide procedures for amending or terminating the plan). As a result, employers must draft an entire plan document or create a **"wrap" plan document** to meet ERISA's requirements. A wrap plan document is designed to meet plan documentation requirements under ERISA and other federal laws and to incorporate all other welfare plans, insurance contracts, and other relevant documents into a single plan. These materials can be kept together for administrative ease.

Unless requested, the written plan document does not need to be furnished to employees.

Summary Plan Description Requirement

ERISA requires the administrator of an employee benefit plan to furnish participants with a summary plan description (SPD). An SPD must be written in a manner calculated to be understood by the average plan participant and must be sufficiently comprehensive to inform participants about their rights and obligations under the plan, including:

- Eligibility requirements;
- A description of plan benefits and how to file a claim for benefits;
- Applicable premiums, cost-sharing, deductibles and copayments; and
- Notices and descriptions required under COBRA, HIPAA, and other health coverage laws.

Many employers wrongly assume that documents provided by an insurance company for fully insured products satisfy the SPD requirements. The insurance booklet will often contain detailed information regarding plan benefits and coverage. However, in many cases, the plan administrator will need to provide additional information that is not contained within the insurance booklet in order to comply with the SPD content requirements. A **wrap SPD** is designed to meet ERISA's requirements by incorporating and supplementing documents provided by insurance companies.

SPD Deadlines

Participants must receive an SPD by the following deadlines:

- Within **90 days** after an employee becomes covered under the plan.
- Within **30 days** of a participant's written request.
- New plans have **120 days** after becoming subject to ERISA to distribute the SPD.

SPD Updates

ERISA does not require plan administrators to provide a new SPD every year. An updated SPD must be provided **every five years** if material modifications are made to the SPD's information during that time period. If no changes are made, then an updated SPD must be provided **every 10 years**.

It is typical for plan design changes to be made each year, particularly for group health plans. Any material changes to plan design or operation must be communicated to participants. Since ERISA does not require a plan's SPD to be updated each year, these changes do not need to be communicated through an updated SPD booklet. Instead, they can be communicated through a **summary of material modification (or SMM)**. However, when the plan changes are significant, an employer may decide that it is best to update the SPD booklet, rather than use an SMM, to communicate those changes to participants.

An SMM (or an updated SPD) must be provided within **210 days after the close of the plan year** in which the change was adopted. If benefits or services are materially reduced, participants must be provided notice:

- Within **60 days** from adoption; or
- Within **90 days** from adoption, if participants receive such information from the plan administrator at regular intervals of not more than 90 days.

In addition to the SPD, the Affordable Care Act (ACA) requires plan administrators and issuers to provide participants with a summary of benefits and coverage (SBC). As a related requirement, under the ACA, plan administrators and issuers must provide 60 days' advance notice of any material modification to plan terms or coverage that takes effect mid-plan year and impacts the content of the SBC. The 60-day notice can be provided to participants through an updated SBC or by issuing an SMM.

A "material modification" is any change to a plan's coverage that (independently or in connection with other changes taking place at the same time) would be considered by the average plan participant to be an important change in covered benefits or other terms of coverage.

Distribution

The plan administrator is required to provide the SPD to participants in a manner reasonably calculated to ensure actual receipt of the material by the participant. The following are examples of acceptable methods of delivery:

- Hand delivery to employees 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; or
- Electronic media. DOL regulations include a safe harbor provision applicable to electronic delivery of SPDs to the following two groups of plan participants:
 - Employees with work-related computer access; and
 - Other plan participants and beneficiaries who consent to receive disclosures electronically.

For more information on the requirements for distributing plan documents through electronic media, please [click here](#).

Form 5500 Requirement

Each year, employers that are subject to ERISA must file an annual report with the DOL for their employee benefit plans, unless a filing exemption applies. This filing is made via **Form 5500**, and must be filed by the last day of the seventh month following the end of the plan year, unless an extension applies. For calendar year plans, the deadline is **July 31**. An employer may request a one-time extension of two and one-half months by filing IRS Form 5558 by the normal due date of the Form 5500 (for calendar year plans, this extended deadline is typically Oct. 15).

The Form 5500, including required schedules and attachments, must be filed electronically using the DOL's [EFAST2 electronic filing system](#). Employers cannot file the Form 5500 on paper. Under EFAST2, employers may use either approved third-party vendor software or the DOL's web-based filing system (IFILE) to prepare and submit Forms 5500.

Exemption for Small Plans

A small welfare benefit plan is completely exempt from the Form 5500 filing requirement if it:

- Has **fewer than 100 covered participants** at the beginning of the plan year; and
- Is unfunded or fully insured. The plan can have a combination of insured and unfunded benefits and still qualify for the exemption.

An unfunded welfare benefit plan has its benefits paid directly from the general assets of the employer sponsoring the plan. A plan that uses a trust or separately maintained fund to hold plan assets or pay benefits is not unfunded. A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies.

[Click here](#) for more information on the Form 5500 requirement.

Summary Annual Report Requirement

Employers that are required to comply with the Form 5500 requirement must also provide each plan participant with a **Summary Annual Report (SAR)**, which provides a narrative summary of the information in the Form 5500. The Summary Annual Report generally must be distributed annually **within 9 months** after the end of the plan year. The Department of Labor has released a [model SAR](#) relating to welfare plans for plan years beginning in 2023 and later.

Fiduciary Requirements

ERISA also sets standards and rules governing the conduct of plan fiduciaries. In general, a "fiduciary" is any person who exercises discretionary authority or control over the management of a plan, or management or disposition of the assets of a plan. Among other things, fiduciaries must discharge their duties **solely in the interest of plan participants and beneficiaries**. [Click here](#) for more information on ERISA's fiduciary requirements.