

CLIENT ALERT

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IMPORTANT COMPLIANCE INFORMATION

Including information on ERISA, HIPAA and Section 125 of the IRC.

What is ERISA?

ERISA is a federal law that sets minimum standards for employee benefit plans (retirement and welfare benefit plans). ERISA is enforced by the Employee Benefits Security Administration (EBSA).

Which employers are subject to ERISA?

Covers all private sector employers of all business types who maintain retirement and/or welfare benefit plans for their employees, including Corporations, S Corporations, Partnerships, LLC, Sole proprietors, Nonprofit organizations. Note that there is no small employer exemption from ERISA overall. The one exception is for governmental employer's and church plans

Section 125 Premium Only Plans

Anytime you allow employees to pay for their benefit contributions on a pre-tax basis you are offering a Premium Only Plan (POP) under Section 125 of the Internal Revenue Code (IRC). As an IRS requirement, this is an accounting function. However, if your accountant or payroll company has not assisted with the setup of this plan, we can provide guidance and vendors who will provide this service for a nominal fee.

The IRS is very clear that Premium Only Plans must meet certain criteria:

- There must be a Plan Document that describes the POP Plan
- There must be a Summary Plan description that is provided to each eligible employee
- There must be an irrevocable election form
- There must be a resolution to offer a Section 125 plan
- Only eligible employees (as defined by the IRS) may participate (*)
- The plan may not discriminate in favor of highly compensated or key employees
- The plan must be non-discriminatory

(*)As a general rule, people who are considered by the Internal Revenue Service to be "self-employed" cannot participate in Section 125 plans, although employees of self-employed employers may participate.

Plan Documents

Employers that are subject to ERISA and who offer plans that are subject to ERISA must have the proper plan documentation in place. Examples of plans that are subject to ERISA include, but are not limited to Medical, Dental, Vision, Life insurance, Disability Coverage and Health FSA Plans. Each applicable plan must have a plan document and must distribute an SPD (Summary Plan Description) to their participants. Insurance carriers are not required to provide this material, though some do. Carriers are required to provide a certificate and in the case of medical benefits, a Summary of Benefits and Coverage. One simple way to comply with this requirement is to have a wrap document that combine all the ERISA plans into one plan. This document works in conjunction with the certificates of coverage to meet the ERISA requirements. We can provide guidance and vendors who will provide this service for a fee.

DOL Safe Harbor for Electronic Distribution of Documents

Due to increasing notification responsibilities, more and more employers are providing required documents via the internet. (Email, Intranet Site, External Internet sites) While this is certainly more efficient and saves on cost, employers must be aware of the rules that surround electronic disclosure of documents.

The Department of Labor has Safe Harbor requirements that must be adhered to. There are two sets of requirements, one for employees that routinely have access to electronic documents as in integral part of their jobs and those who do not.

Employees with Access to Electronic Media at Work

1. Notice is provided to each participant in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the individual of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by your plan)
2. Notice is given that the participant has the right to request and obtain a paper version of such document

Employees without Access to Electronic Media at Work

1. Participant must affirmatively give consent for the material to be sent electronically. Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:
 - (1) The types of documents to which the consent would apply;
 - (2) That consent can be withdrawn at any time without charge;
 - (3) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other individual's address for receipt of electronically furnished documents or other information;
 - (4) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;
 - (5) and Any hardware and software requirements for accessing and retaining the documents.

We have attached the Regulation regarding the Safe Harbor and recommend that you take the time to read this document and review your procedures to ensure that you meet the DOL Safe Harbor if your distribution method includes providing some or all documents using electronic media.

ADDITIONAL COMPLIANCE INFORMATION:

The following are websites, some of them interactive, to assist your company management with compliance issues. We encourage you to review these sites often as well as pass this information onto others in your company that may find it useful.

Websites are new since we last sent this Client Alert out

1. The elaws Employment Adviser from the DOL is an excellent tool for employers of every size. The compliance guide encompasses employee benefit, pension, poster, accounting and reporting requirements.

The *FirstStep* Employment Law Advisor is designed to help employers determine which federal employment laws administered by the U.S. Department of Labor (DOL) apply to their business or organization, what recordkeeping and reporting requirements they must comply with, and which posters they need to post.

(<https://webapps.dol.gov/elaws/>)

The Advisor provides three basic starting points depending on your interests and needs:

- FirstStep - Employment Law Overview Advisor (<https://webapps.dol.gov/elaws/FirstStep.htm>) provides a short primer on each law's basic provisions as well as any related recordkeeping, reporting and notice requirements.
 - FirstStep - Recordkeeping, Reporting, and Notices Advisor (<https://webapps.dol.gov/elaws/FirstStepRRN.htm>) provides detailed explanations of each law's recordkeeping, reporting and notice requirements.
 - FirstStep - Poster Advisor (<https://webapps.dol.gov/elaws/posters.html>) provides access to short descriptions of DOL poster requirements and links to printable posters.
2. You can easily find your state Department of Labor by following this link and then clicking on your state: https://www.dol.gov/whd/contacts/state_of.htm
 3. The DOL, through the Employee Benefits Security Administration provides invaluable support for employers subject to ERISA. The Employee Retirement Income Security

Act of 1974 (ERISA) is a federal law that sets minimum standards for retirement and health benefit plans in private industry. ERISA does not require any employer to establish a plan. It only requires that those who establish plans must meet certain minimum standards.

EBSA's (<https://www.dol.gov/agencies/ebsa>) compliance assistance information will assist employers and employee benefit plan officials with understanding and complying with the requirements of ERISA as it applies to the administration of employee retirement, health and other welfare benefit plans.

Helpful Information:

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/health-plans>

<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf>

<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/reporting-and-disclosure-guide-for-employee-benefit-plans.pdf>

4. The Health Insurance Portability and Accountability Act (HIPAA) Security Rule requires that covered entities conduct a risk assessment of their organization. Health Plans are considered covered entities so when you act on behalf of the Health Plan you are a covered entity.

This security risk assessment (SRA) tool will help you conduct a risk assessment of your practices within the human resources department. Though this tool was designed for health care offices, covered entities that must comply with HIPAA include Health Plans and Business Associates and may use it as well. Visit the following site for additional information and to download the tool.

<http://www.healthit.gov/providers-professionals/security-risk-assessment>

A risk assessment helps you ensure that you are compliant with HIPAA's administrative, physical, and technical safeguards. You should perform this assessment annually.

5. The Federal Trade Commission released *Start with Security, A Guide for Business*. This guide provides information on 10 vital areas for businesses to review against their own privacy and security practices, including:

- Start with security
- Control access to data sensibly
- Require secure passwords and authentication
- Store sensitive personal information securely and protect it during transmission
- Segment your network and monitor who's trying to get in and out
- Secure remote access to your network
- Apply sound security practices when developing new products
- Make sure your service providers implement reasonable security measures
- Put procedures in place to keep your security current and address vulnerabilities that may arise
- Secure paper, physical media and devices

The guide can be found at this link:

<https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>

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