

COMPLIANCE OVERVIEW

Provided by ABM Insurance & Benefit Services

ERISA Disclosures for Welfare Benefit Plans

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for welfare benefit plans maintained by private-sector employers. ERISA-covered welfare benefit plans must comply with certain ongoing reporting and disclosure requirements, including the following:

- ✓ **Summary plan description (SPD)**—Employers must automatically provide an SPD to participants when they begin participating in the plan.
- ✓ **Summary of material modifications (SMM)**—Changes to the plan must be communicated to participants through an updated SPD or SMM.
- ✓ **Form 5500**—Employee benefit plans are subject to an annual reporting requirement, unless an exemption applies.

Not complying with ERISA's reporting and disclosure requirements may trigger penalties for an employer or put the employer at a disadvantage in the event that an employee dispute over benefits arises.

LINKS AND RESOURCES

- The DOL's [Reporting and Disclosure Guide for Employee Benefit Plans](#)
- Form 5500 series [website](#), which includes links to the Form 5500 and instructions

This Compliance Overview is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

HIGHLIGHTS

SPD

- The SPD informs participants about their rights and benefits under the plan.
- An SPD must be provided to new participants automatically (within 90 days).
- Plan changes must be communicated to participants, either through an updated SPD or SMM.

FORM 5500

- ERISA-covered employee benefit plans are subject to an annual Form 5500 filing requirement, unless an exemption applies.
- Small welfare plans that are unfunded or insured are exempt.
- To qualify for the small plan exemption, the plan must have fewer than 100 covered participants at the beginning of the plan year.



COVERED EMPLOYERS

ERISA applies to **virtually all private-sector employers** that maintain welfare benefit plans for their employees, regardless of the size of the employer. This includes corporations, partnerships, limited liability companies, sole proprietorships and nonprofit organizations.

Only two types of employers are exempt from ERISA—**governmental and church employers**. Employee welfare benefit plans maintained by governmental employers (for example, a city, county or township) or church employers are not subject to ERISA's requirements.

COVERED BENEFIT PLANS

Many employment plans or programs that provide nonretirement benefits to employees are considered employee welfare benefit plans that are subject to ERISA. To qualify as an ERISA plan, there must be a plan, fund or program that is established by the employer for the purpose of providing ERISA-covered benefits (through the purchase of insurance or otherwise) to participants and their beneficiaries.

ERISA generally applies to the following common employee benefits, regardless of whether they are insured or self-funded:

- Medical, surgical or hospital benefits;
- Dental benefits;
- Vision benefits;
- Prescription drug benefits;
- Health reimbursement arrangements (HRAs);
- Health flexible spending accounts (FSAs);
- Accidental death and dismemberment (AD&D) benefits;
- Group life insurance benefits;
- Death benefits (other than life insurance);
- Wellness programs (when medical care is provided);
- Employee assistance plans (EAPs) (when medical care is provided);
- Disability benefits—both short-term disability and long-term disability—if insured or funded other than as a payroll practice; and
- Disease-specific coverage (for example, cancer policies that provide medical benefits).

REPORTING AND DISCLOSURE

ERISA requires welfare benefit plans to comply with numerous reporting and disclosure requirements, as described in the chart below. The plan administrator is the entity that is legally responsible under ERISA for most of the reporting and disclosure requirements. For single-employer ERISA plans, the plan administrator is the **employer that sponsors the plan**, unless the plan document designates a different entity.

DISCLOSURE	DESCRIPTION	APPLICABLE PLANS	DUE DATE
<p>Summary plan description (SPD)</p>	<p>The SPD is the primary vehicle for informing participants about their plan and how it operates. It must be written for average participants and include certain types of information, such as the plan’s eligibility rules for benefits.</p>	<p>Virtually all welfare benefit plans subject to ERISA must provide participants with an SPD, regardless of size.</p>	<p>The plan administrator must automatically provide the SPD to new participants within 90 days of becoming covered by the plan. The SPD must also be provided within 30 days of a participant’s written request for the SPD.</p> <p>An updated SPD must be provided to participants at least every five years, if material modifications have been made during that period. If no material modifications have been made, an updated SPD must be provided at least every 10 years.</p>
<p>Summary of material modifications (SMM)</p>	<p>An SMM must be provided when there is a material modification in the terms of the plan or any change in the information required to be in the SPD. The SMM updates the plan’s SPD. Thus, a plan’s SPD will include all the SMMs that have been provided, but not yet incorporated into the SPD document. Distribution of an updated SPD will also satisfy the SMM requirement.</p>	<p>Virtually all welfare benefit plans subject to ERISA must provide participants with SMMs (to update their SPDs when plan changes are made).</p>	<p>As a general rule, the SMM must be provided within 210 days after the close of the plan year in which the change was adopted. A shorter deadline may apply in some circumstances, depending on the nature of the modification or change. If the change is a material reduction in group health plan benefits or services, the deadline for providing the SMM is 60 days after the change is adopted.</p> <p>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 affects the content of the plan’s summary of benefits and coverage (SBC). The 60-day notice can be provided to participants through an updated SBC or by issuing an SMM.</p>

DISCLOSURE	DESCRIPTION	APPLICABLE PLANS	DUE DATE
Plan documents	The plan administrator must furnish copies of certain documents upon written request by a participant and/or beneficiary and have copies available for examination. The documents include the latest updated SPD, SMMs, the latest Form 5500, trust agreement, and other instruments under which the plan is established or operated.	All ERISA-covered welfare benefit plans must respond to participants' requests for plan documents.	The plan administrator must provide copies no later than 30 days after a written request and make copies available at specified locations.
Form 5500	Plan administrators are required to file an annual return/report with the Department of Labor (DOL) regarding the plan's financial condition, investments and operations. The annual reporting obligation is generally satisfied by filing the Form 5500 Annual Return/Report of Employee Benefit Plan, with any required schedules and attachments.	Administrators of ERISA-covered welfare benefit plans are required to file an annual Form 5500, unless a reporting exemption applies. Small welfare plans are completely exempt from the Form 5500 filing requirement if they: <ul style="list-style-type: none"> • Have fewer than 100 covered participants at the beginning of the plan year; and • Are unfunded (benefits are paid from the employer's general assets) or insured. The plan can have a combination of insured and unfunded benefits and still qualify for the exemption. 	Generally, plan administrators must file by the last day of the seventh month following the end of the plan year, unless an extension has been granted. For calendar year plans, the deadline is normally July 31 of the following year. A plan administrator may request a one-time extension of two and one-half months by filing IRS Form 5558 by the unextended due date of the Form 5500. If the Form 5558 is filed on or before the normal due date of the Form 5500 or 5500-SF, the extension is automatically granted.

DISCLOSURE	DESCRIPTION	APPLICABLE PLANS	DUE DATE
Summary annual report (SAR)	The SAR is a narrative summary of the Form 5500 and includes a statement of the right to receive the annual report.	Plans that are exempt from the Form 5500 filing requirement are also exempt from providing the SAR. In addition, unfunded welfare plans, regardless of size, are not required to provide the SAR.	Generally, the plan administrator must provide the SAR within nine months of the close of the plan year. If an extension of time to file the Form 5500 is obtained, the plan administrator must furnish the SAR within two months after the close of the extension period.

POSSIBLE PENALTIES – NONCOMPLIANCE

Not complying with ERISA’s reporting and disclosure requirements may expose an employer to potential penalties (or other negative outcomes), depending on the specific reporting and disclosure requirement involved.

SPD, SMM and Other Plan Documents

There are **no specific penalties** under ERISA for failing to provide participants with an SPD, SMM or other plan documents. However, not having these documents can have serious consequences for an employer, including the following:

- **Participant requests:** A plan administrator may be charged up to \$110 per day if it does not provide the SPD, SMM or other plan documents within 30 days after an individual's request. These penalties may apply even where the SPD or other plan documents do not exist.
- **Benefit lawsuits:** Not having a plan document (or failing to distribute an SPD) may put an employer at a disadvantage if a participant brings a lawsuit for benefits under the plan. Without these documents, it will be difficult for a plan administrator to prove that the plan’s terms support benefit decisions. Also, without these documents, plan participants can use past practices or other evidence outside of the actual plan’s terms (such as informal summaries or oral communications) to support their claims. Additionally, courts will likely apply a standard of review that is less favorable to the employer (and more favorable to participants) when reviewing benefit claims under an unwritten plan.
- **DOL requests:** The DOL has broad authority to investigate or audit an employee benefit plan’s compliance with ERISA. When the DOL selects an employer’s health plan for audit, it will almost always ask to see a copy of the plan document and SPD, in addition to other plan-related documents. If an employer cannot respond to the DOL’s document requests, additional document requests, interviews, on-site visits or even DOL enforcement actions may be triggered. Also, the DOL may charge a plan administrator up to \$156 per day (up to a maximum of \$1,566 per request) if it does not provide plan documentation to the DOL upon request.

Form 5500

The DOL can assess penalties for noncompliance with the annual reporting requirements, including submitting incomplete Form 5500s or not filing Form 5500s by the due date. For example, the DOL has the authority under ERISA to assess penalties of up to \$2,194 per day for each day an administrator fails or refuses to file a complete Form 5500.

The penalties may be waived if the noncompliance was due to reasonable cause. In addition, ERISA provides for criminal penalties for willful violations of its reporting requirements.

Summary Annual Report (SAR)

There are no specific penalties under ERISA for failing to provide participants with an SAR. However, a plan administrator may be charged up to \$110 per day if it does not provide an SAR within 30 days after an individual's request.

The DOL sponsors a voluntary correction program—the [Delinquent Filer Voluntary Correction Program \(DFVCP\)](#)—to encourage employee benefit plan administrators to voluntarily file overdue Form 5500s. The DFVCP gives delinquent plan administrators a way to avoid potentially higher penalty assessments by voluntarily completing their late Form 5500s for a year and paying reduced penalties.