

ERISA Compliance *Checklist*



Brokers and Employers



This ERISA Compliance Checklist can be used as a tool to do a quick assessment of some key aspects of your health and welfare benefit plan compliance and help you identify gaps in compliance. This is not an all-inclusive list, but covers the more common deficiencies and areas that are often overlooked.

Do you sponsor health and welfare employee benefits that are subject to the Employee Retirement Income Security Act (ERISA)?

- Yes. Be aware that there are ERISA compliance requirements that include plan documentation, summary plan descriptions, COBRA, annual notice requirements, Form 5500 obligations, and record retention requirements that you will need to satisfy to remain ERISA compliant.
- No. There are no ERISA obligations.

Do you currently have an ERISA compliant up-to-date plan document that has been formally adopted?

- Yes. You have met an important ERISA compliance obligation.
- No. A plan document is required for employer sponsored ERISA benefits. It is rare that your insurance carrier will provide the required plan documentation.

Do you currently have an ERISA compliant summary plan description (SPD) that is up-to-date and has it been distributed to plan participants within 90 days of enrollment and upon request?

- Yes. You have met an important ERISA compliance obligation.
- No. A summary plan description is required for employer sponsored ERISA benefits. It is rare that your insurance carrier will provide the required plan documentation. Insurance booklets or certificates will rarely meet the SPD requirements. Failure to distribute SPDs according to Department of Labor timelines can result in daily penalties.

Do you distribute SPDs in a way you are reasonably calculated to guarantee actual receipt?

- Yes. You have met an important ERISA compliance obligation.
- No. To avoid penalties for failure to properly distribute SPDs, you should be aware of the Department of Labor (DOL) electronic distribution safe harbor guidelines and keep a record of the method and a list of whom you distributed SPDs to. If you are not reasonably certain that the individual will receive the SPD in an electronic copy, you can either obtain consent or be prepared to provide a paper copy at no charge. DOL Reference: 29 CFR §2520.104b-1.

Do you have separate plan documents for each ERISA benefit or do you have a Wrap Plan Document/SPD that bundles multiple benefits under one ERISA plan number?

- Yes. You have met an important ERISA compliance obligation.
- No. You can elect to create separate plan documents and SPDs for each ERISA benefit or bundle all of your ERISA benefits under one ERISA plan and create a Wrap Plan Document and SPD to meet this ERISA requirement. Wrap Plan Documents and SPDs are often created as companion documents to go along with the information that is provided by the insurance carriers and other vendors who alone do not provide the required documentation.

Have you maintained your Plan Document and SPD for regulatory updates and other employer initiated changes?

- Yes. You have met an important ERISA compliance obligation.
- No. It is important to keep your plan document and SPD up-to-date since it is used as a participant communication tool and provides a record of your plan details. This is particularly important in the event of an audit or any litigation with an employee over their benefits.

Are you up to date on any Form 5500 obligations?

- Yes. You have met an important ERISA compliance obligation.
- No. Form 5500s are required for unfunded welfare benefit plans with 100 or more participants on the first day of the plan year and are due by the last day of the seventh month following the end of the plan year. Failure to file any required Form 5500s timely can result in significant daily penalties.

Have you filed all of your required Form 5500s timely?

- Yes. You have met an important ERISA compliance obligation.
- No. Be aware that the Delinquent Filer Voluntary Compliance Program (DFVCP) (<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/dfvcp>) can help you clear up any filing deficiencies at a reduced penalty if you come forward in advance of discovery from an audit. Failure to clear up late filings could result in significant daily penalties.

Have you distributed all of the required employer notices?

- Yes. You have met an important ERISA compliance obligation.
- No. Be aware that there are various employer notices that must be distributed either annually or at specific times. Examples of some of the required notices include: COBRA Initial Notice, COBRA Election Notice, Notice of Grandfathered Status, Notice of Privacy Practices, Children's Health Insurance Program Reauthorization (CHIPRA), Medical Part D Credit Coverage Disclosure, Summary of Benefits and Coverage, Summary Annual Report, Newborns' and Mothers' Health Protection Act, Women's Health and Cancer Rights Act, etc. Failure to provide the required notices can result in penalties.

Are you offering COBRA for all the required plans?

- Yes. You have met an important ERISA compliance obligation.
- No. Failure to meet COBRA obligations can result in significant penalties and legal fees. You should be aware of which plans are subject to COBRA (group health plans that include Health Flexible Spending Accounts, Health Reimbursement Arrangements, and some Employee Assistance and Wellness Plans), the notice requirements, and the appropriate time periods. COBRA litigation is on the rise so this is an area you definitely want to ensure you have proper processes and procedures in place or have aligned yourself with a trusted partner.

Need Assistance?

If you answered no to any of the questions above, we're here to help. EBC is a trusted third party administrator of employee benefit plans with a team of in-house compliance experts who work to apply their skills and knowledge to your specific situation. At EBC, we know one size does not fit all and we're dedicated to collaborating with you to understand your needs and implementing solutions that will best serve the needs of your employees.

Let us help meet your compliance needs! [Contact us](#) to start a conversation or if you have any questions.

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