

Compliance

Employee Benefits: General Audit Concerns



February 2018

EMPLOYEE BENEFITS: GENERAL AUDIT CONCERNS*

Audit Item	Audit Comments
<h2>All Employee Benefit Plans</h2>	
<h3>Plan Documents</h3>	<ul style="list-style-type: none"> • Does a Plan document exist? • Has the Plan document been properly updated for all current legal requirements? • Have all amendments been properly signed and dated? • Do participants have an easy way to access the Plan documents? • Has the trust been properly updated or, if a welfare plan, does an exemption from the trust requirement apply? • For retirement plans, is the Plan the subject of a favorable determination letter from the IRS?
<h3>Summary Plan Description/Summary of Material Modifications</h3>	<ul style="list-style-type: none"> • Has the Summary Plan Description been updated within the past five (5) years? • Do the terms of the Summary Plan Description match the terms of the Plan? • Does all enrollment information provided to participants accurately reflect the terms of the Plan as set forth in the Plan document and Summary Plan Description? • Has the Summary Plan Description been provided to all participants within 90 days of becoming eligible or within 30 days of a request? • Have all summaries of material modification been provided in a timely fashion no later than the 210th day following the last day of the plan year in which the change was adopted? • Are the Summary Plan Description and all plan documents and notices electronically delivered? (If yes, have you had competent ERISA counsel review your processes for compliance with ERISA?)
<h3>Enrollment Communications</h3>	<ul style="list-style-type: none"> • Do the enrollment materials accurately reflect the terms of the Plan? • Are the enrollment materials electronically delivered? (If yes, see ERISA Electronic Delivery below.)
<h3>Form 5500s/Summary Annual Reports</h3> <p>(Note: generally not required for welfare plans with less than 100 participants.)</p>	<ul style="list-style-type: none"> • Have the annual Form 5500s with all attachments and exhibits been timely filed? • Has a Summary Annual Report (SAR) been timely provided to each participant and each beneficiary, including COBRA, retirees and beneficiaries under a QMSCO (if applicable)?

* This list is non-exhaustive. It is designed to identify leading audit risks. For a comprehensive review of your company's employee benefit plans, please contact Peter Marathas at pmarathas@marbarlaw.com or Stacy Barrow at sbarrow@marbarlaw.com. This audit tool is not designed to provide—and does not provide—legal advice. This is not intended to be attorney advertising. © 2018. Marathas Barrow Weatherhead Lent LLP. All rights reserved. Used with permission.

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<p>Non-discrimination Testing</p> <p>(401(k) Plan, Self-Insured Group Health Plan, Cafeteria Plans, Flexible Spending Accounts, etc.)</p>	<ul style="list-style-type: none"> • Has all non-discrimination testing been performed for all years? • Does the Plan routinely pass testing? • If the Plan has failed testing, have the appropriate steps been taken to correct the failure?
<p>Contracts for Plan Administration</p>	<ul style="list-style-type: none"> • Have all vendor contracts been reviewed by competent ERISA counsel? • For 401(k) plan and other contracts where fees are paid by participants, have fees been independently reviewed to be reasonable? • Is the contract easily terminable without penalty and assignable? • Does the contract include indemnification for the employer/plan?
<p>ERISA Electronic Delivery</p>	<ul style="list-style-type: none"> • Has a qualified ERISA lawyer reviewed your processes for compliance with ERISA? • Does each person receiving electronically delivered materials have direct, desk-top access to a computer (or laptop) and a printer (note: kiosk or centrally located computers are not sufficient)? • Have delivery steps taken for furnishing documents been reasonably calculated to result in the actual receipt of the documents? • Have you conducted periodic reviews or surveys to confirm receipt? • Have reasonable and appropriate steps been taken to safeguard confidentiality of personal information? • Are electronically delivered documents prepared/furnished in a manner consistent with the style, format and content requirements applicable to the document? • Are paper versions of the electronic document available on request (at no charge)? • Each time an electronic document is furnished, is a notice (electronic or paper) provided to each recipient describing the significance of the document? • Have ERISA's complex rules for delivery to participants who are employees and participants and beneficiaries who are not employees been met (consult with ERISA counsel)?

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401(k) Plans	
QDRO and Loan Procedures	<ul style="list-style-type: none"> • Does the Plan have QDRO and Loan Procedures? • Have they been followed? • Do all loan terms meet federal law requirements?
Fiduciary Concerns	<ul style="list-style-type: none"> • Does the Plan have a plan or investment committee? • Does the committee meet regularly (at least twice per year)? • Does the committee work with independent outside advisors to assess plan investments? • Does the plan have a strong 404(c) program that includes communication and education and also focuses on properly diverse investments? • Does the Plan have an investment policy statement? • Does the Plan have an ERISA bond? • Does the company maintain a fiduciary policy? • Have all required disclosure notices been timely provided to participants?
Plan Operation	<ul style="list-style-type: none"> • Has the Plan operated strictly in accordance with its terms? (Examples: Have proper deferral elections been followed? Have participants been admitted when they satisfy the enrollment requirements set forth in the Plan and Summary Plan Description?) • Have all deferrals been timely allocated to participants' accounts "as soon as reasonably practicable" and in accordance with Department of Labor regulations? • Have loan and withdrawal procedures been properly followed? • Has competent ERISA counsel reviewed the Plan's operation within the last 24 months?
Welfare Plans	
Notices	<ul style="list-style-type: none"> • Have all required notices, including those required by the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) and the Women's Health and Cancer Rights Act of 1998 (WHCRA), been timely provided? • Is the Medicare Part D Notice timely provided each year? • Is the Summary of Benefits and Coverage timely provided each year? • Is the Exchange Notice provided to <u>all</u> new employees?

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COBRA	<ul style="list-style-type: none"> • Are all required notices up-to-date? • Is the Initial Notice timely provided to all new enrollees at enrollment or within 90 days of commencement coverage? • If the Initial Notice is provided in the Summary Plan Description, have steps been taken to ensure delivery to the non-employee spouse (if covered)? • Is the Qualifying Event Notice timely provided no later than 44 days from the qualifying event? • Is the Notice of Unavailability of COBRA provided no later than 44 days from the qualifying event? • Is the Notice of COBRA Coverage Termination provided as soon as possible after the termination event? • Are participants provided a 30 day grace period to provide premium payments? • Are all COBRA participants afforded the same rights as active employees? • Is COBRA offered for all ERISA group health plans, including health, dental, vision, certain EAPs, Health Reimbursement Arrangements, Clinic access, etc.?
HIPAA	<ul style="list-style-type: none"> • Has the plan undergone a HIPAA audit in the last 3 years? • Does the plan have a HIPAA Policy and Procedure Manual? • Is the HIPAA Privacy Notice timely provided to all participants? • Has the HIPAA Privacy reminder notice been provided every three years? • Does the plan have a Privacy Officer? • Is HIPAA training offered annually? • Are Business Associate Agreements in place with all business associates? • Are all HIPAA privacy protocols strictly observed? • Are breach notification procedures in place?
Affordable Care Act	<ul style="list-style-type: none"> • Has a pay-or-play assessment been completed? • Is the employer appropriately tracking all hours for employees to determine and demonstrate full-time employee status? • Has the Plan Document and the Summary Plan Description been updated to reflect all ACA requirements and any eligibility requirements (e.g., variable hour treatment)? • If the company issues more than 250 W-2s, are the ACA W-2 rules followed? • Are methodologies in place to meet the 6055/6056 reporting requirements (forms 1094 and 1095)? • Are all taxes timely paid (i.e., PCORI, Reinsurance, etc.)?

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