

Hamilton News

ERISA Notice Requirements (Health & Welfare Plan Documents and SPDs)

Employers who sponsor group health and welfare plans are required to provide certain notices to plan participants at enrollment and other notices on an annual basis. The Patient Protection and Affordable Care Act increased these notice obligations, and plan sponsors have been focusing on complying with them.

Since most employer-sponsored group health and welfare plans and retirement plans are subject to the provisions of the Employee Retirement Income Security Act (ERISA), there are specific requirements which dictate what must be communicated to plan participants and when. Plan Sponsors are required to maintain a Plan Document and a Summary Plan Description (SPD). The Plan Document describes the plan's terms and conditions relating to the operation and administration of the plan. The SPD is the main vehicle for communicating plan rights and obligations to participants and beneficiaries.

The responsibility for creating a health and welfare Plan Document and SPD falls to the Plan Sponsor (in contrast to

401(k) Plan Documents and SPDs, which are typically provided by the 401(k) administrator). An insurance carrier's contract, evidence of coverage booklet, or summary of benefits should be distributed to participants, but these materials do not constitute an ERISA-compliant Plan Document or SPD. However, a health and welfare Plan Document and SPD can be written to wrap around these materials.

An SPD should be furnished to participants within 90 days after becoming covered—whether they request it or not. Changes in plan design must be reflected in a Summary of Material Modifications (SMM) or updated SPD. An SMM must be delivered within 210 days of the end of the plan year. But, if a change involves a material reduction in covered services or benefits, an SMM or an updated SPD must be furnished within 60 days after adoption. An updated SPD must be furnished to all covered participants every 5 years if there have been changes, and every 10 years even if there have been no changes. The DOL can impose fines of up to \$110/day on an employer that fails to deliver SPDs in a timely and appropriate manner.

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Is there an app for that?



The DOL announced on May 9, 2011 that they now offer a free application for the iPhone and iPod Touch—an electronic timesheet to help employees independently track the hours they work and break times to determine the wages (including overtime) they are owed. The application is currently offered in English and Spanish. The DOL is exploring the development of similar applications for other smartphones.

The DOL says, "This new technology is significant because, instead of relying on their employers' records, workers now can keep their own records. This information could prove invaluable during a Wage and Hour Division investigation when an employer has failed to maintain accurate employment records." In addition, the DOL Wage and Hour Division developed a printable work hours calendar for employees without smartphones. It includes explanations about workers' rights and how to file a wage violation complaint.

See our article "Emphasis on Wage and Hour Compliance" in the December 2010 edition of the Hamilton News. The DOL is focusing on wage and hour violations with the addition of 350 investigators. Bringing employers into compliance provides additional revenue to governments in the way of additional employment taxes on back wages and any penalties that may be imposed.

Still have questions about Health Care Reform? Check out www.healthcare.gov.

Social Security Administration No-Match Letters

Beginning in April, employers will start seeing “no-match” letters again from the Social Security Administration (SSA). These letters notify an employer when a Social Security Number on an employee’s W-2 does not match the name in the SSA records. The following recommendations have been published by the Department of Justice:

DO:

1. Complete an I-9 for all new hires within 3 days of beginning employment.
2. Recognize that name/SSN no-matches can result because of simple administrative errors.
3. Check the reported no-match information against your personnel records.
4. Inform the employee of the no-match notice.
5. Ask the employee to confirm the name/SSN reflected in your personnel records.
6. If your records are correct, advise the employee to contact the SSA to correct and/or update the SSA records.
7. Give the employee a reasonable period of time to address a reported no-match with the local SSA office.
8. Follow the same procedures for all employees regardless of citizenship status or national origin.
9. Periodically meet with or otherwise contact the employee to learn and document the status of the employee’s efforts to address and resolve the no-match.
10. Review any document the employee chooses to offer showing resolution of the no-match.
11. Submit any employer or employee corrections to the SSA.

DON'T:

1. Assume the no-match conveys information regarding the employee’s immigration status or actual work authority.
2. Use the receipt of a no-match notice alone as a basis to terminate, suspend or take other adverse action against the employee.
3. Attempt to immediately re-verify the employee’s employment eligibility by requesting the completion of a new Form I-9 based solely on the no-match notice.
4. Follow different procedures for different classes of employees based on national origin or citizenship status.
5. Require the employee to produce specific I-9 documents to address the no-match.

Distracted Driving

The Department of Labor (DOL) and Department of Transportation (DOT) need your help in establishing a work environment that discourages distracted driving. To that end, in October of 2010, the DOL's Occupational Safety and Health Administration (OSHA) began an education campaign focusing on cell and smartphone usage and, in particular, texting while driving. See www.distraction.gov.

In 2009 there were 5,400 deaths and thousands of injuries in crashes linked to distraction. Studies have shown that driving while talking on a cell phone has a risk comparable to driving under the influence of alcohol (0.08% blood alcohol level). And thirty states (including VA, MD, DC) have already banned text messaging while driving.

The Assistant Secretary of Labor for OSHA, Dr. David Michaels, points out that, "There's no question that new communications technologies are helping businesses work smarter and faster. But getting work done faster does not justify the dramatically increased risk of injury and death that comes with texting while driving."

The leading cause of worker fatalities is motor vehicle accidents. Under OSHA, an employer is responsible for providing a safe work environment. It is important to communicate clearly your policy about cell phone usage and texting when an employee drives on company business. This includes situations when an employee uses a company vehicle, a rented/leased vehicle, or their personal vehicle. Your policy should be written

and discussed with employees. If an employee violates the policy, they should be counseled and, if necessary, disciplined. It is equally important to not directly or inadvertently set expectations that might force an employee into dangerous behavior in order to carry out their job. When employer infractions are identified, OSHA will issue citations and penalties.



Best Practice Tip:

Take time to review your related Human Resources policies and procedures to ensure they are complete and current:

- Cell Phone Usage While Driving
- Driving (on Company Business)
 - A Company Vehicle
 - A Personal Vehicle (Personal Auto Insurance is Primary)
- Business Travel Expenses
- Timekeeping for Non-Exempt Employees (What Counts as Hours Worked When Traveling on Company Business)
- Vehicle Accident Reporting
- Workers' Compensation

Medicare Part D

Medicare Part D is the prescription drug benefit available to Medicare participants. An individual is a Part D eligible individual if they are “entitled” to Medicare Part A and/or enrolled in Part B and reside in the service area of a Medicare prescription drug plan or of a Medicare Advantage plan that provides prescription drug coverage. In general, an individual is considered “entitled” to Medicare Part A when the person actually has Part A coverage, not simply when the person is first eligible. A person has Part A coverage if they have attained age 65 and receive monthly social security benefits (or have social security benefits due to disability at an earlier age). If an individual does not enroll in a Part D plan when first eligible, there will be a penalty for enrolling at a later date unless they had Creditable Coverage under another plan.

Required Medicare Part D Notifications

A Plan Sponsor (employer) must provide an annual notice to Medicare Part D eligible individuals who are covered under, or who apply for, the prescription drug coverage provided under the Plan Sponsor’s group health plan. This notice must be sent to active and disabled employees, COBRA participants, and retirees, as well as Medicare beneficiaries who are covered as spouses or dependents under active employee and retiree coverage. The annual Medicare Part D notice explains to participants whether the prescription drug coverage provided under the group health plan is considered to be Creditable or Non-Creditable Coverage. Creditable coverage is expected to pay on average as much as the standard Medicare prescription drug coverage. As many Plan Sponsors offer more than one medical/prescription drug program, they may have one that is considered to be Creditable Coverage (for example, a traditional PPO) and another option that offers Non-Creditable Coverage (for example, a qualified High Deductible Health Plan paired with a Health Savings Account). It is important for Medicare Part D eligible individuals to know whether their coverage is Creditable when they have to make a decision to stay in the group health plan coverage or elect coverage under a Medicare Part D plan.

Medicare Part D Annual Disclosure to CMS

A Plan Sponsor has the additional responsibility of disclosing to CMS whether their prescription drug benefit is considered to be Creditable or Non-Creditable Coverage. A simple online disclosure form with instructions and other guidance is available on the CMS Creditable Coverage website. This disclosure should be done no later than 60 days from the beginning of the plan year - so it is a good practice for a Plan Sponsor to add this to their list of benefits renewal/Open Enrollment tasks to ensure it gets done. There are other circumstances under which a Plan Sponsor may have to report a change during the plan year. These situations include the termination of a prescription drug plan or a change in Creditable Coverage status. The Plan Sponsor has 30 days to report these events to CMS.

1099 Provision Repealed

On April 14, 2011, President Obama signed legislation repealing a controversial provision of the Patient Protection and Affordable Care Act (PPACA). The provision would have required businesses to issue a form 1099 to vendors who provided goods or services during the year totaling more than \$600. This provision was intended to help the government recoup underreported taxes estimated at \$2.5 billion. The potential paperwork nightmare, particularly for small businesses, pushed Congress to reconsider it. The Small Business Administration indicated that it would have been an undue barrier to small business growth. (Businesses will still be required to issue a 1099 to any individual or unincorporated business paid in excess of \$600 per calendar year for services rendered.)

Updated Notices: As part of health care reform, the annual election period for Medicare Part D has changed from November 15 through December 31 to October 15 through December 7. The Centers for Medicare and Medicaid Services (CMS) have recently revised the Model Creditable and Non-Creditable Coverage notices to reflect this change. These new notices (or your customized version) must be provided to Medicare Part D eligible individuals on or after April 1, 2011. The change in the Medicare Part D election period is for the upcoming (2011) Medicare Part D election for the 2012 plan year. The new Model Creditable and Non-Creditable Coverage notices are available at <https://www.cms.gov/CreditableCoverage>. They are similar to the 2009 versions except for the change in dates for the Medicare Part D annual election period.

Social Media

The prevalence of social media in modern culture is pushing employers to consider implications on and off the job. Have you considered your company’s stance on employees’ use of social media? Think about this in the context of:

- trade secrets,
- confidential company information,
- disparagement of customers, employees, products, or services,
- discrimination or harassment,
- productivity and performance.



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