

Advantages of Using a Wrap Plan Document

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Question: What are the key advantages of using a wrap plan document?

Summary:

The main reasons to use a wrap document are to ensure compliance with legal requirements under the Employee Retirement Income Security Act of 1974 (ERISA) and to consolidate required Form 5500 reporting and disclosure

obligations under ERISA. Below is a summary of how a wrap plan accomplishes these goals and the potential consequences under ERISA for having inadequate plan documentation.

Detail:

To understand how a wrap plan can assist with compliance obligations under ERISA, first we need some background.

- ERISA generally applies to employer group plans that provide health, life, disability and certain other welfare benefits.¹
- ERISA requires that each applicable arrangement have a written plan document² and that the plan administrator provide a summary plan description (SPD) to summarize plan terms in easy to understand language.³

- Both the plan document and the SPD (which are sometimes combined into one document) must contain certain legally required provisions,⁴ plus there are optional provisions that may be included to protect the plan fiduciaries (among other things).
- In addition, plan administrators must file a Form 5500 for each benefit plan subject to ERISA⁵ (unless an exception applies, such as the plan benefits fewer than 100 plan participants as of the first day of the plan year⁶) and distribute to participants a summary of the contents of the Form 5500 referred to as a summary annual report (SAR).⁷

Wrap it up to ensure compliance, consolidate reporting and reduce administrative burden

- A plan's master contract, policy and/or certificate are typically written to satisfy state insurance law and/or to describe applicable contractual obligations. As a result, these documents often fail to include all the provisions required for ERISA plan documents and SPDs.
- Wrap documents supplement (or wrap around) existing documents to include the necessary ERISA language in both the plan document and the SPD. The wrap documents can also include supplemental information to, for example, protect plan fiduciaries.
- A wrap plan is particularly useful for employers with multiple benefit arrangements for which a Form 5500 and SAR are required.
- The employer can bundle all the benefits together (both self-insured and fully insured) into one 'mega-wrap' plan so that only a single Form 5500 and SAR are required for all applicable benefits.
- This approach reduces preparation costs and filing fees and can help streamline benefit administration.
- Plans sometimes need amendments to comply with changes in the law. Wrap plans can reduce the administrative cost associated with plan amendments since typically only a single amendment to the wrap plan is needed.

Consequences of failure to comply with ERISA documentation requirements

While there are no specific penalties for failure to prepare a written plan document and SPD, the risk to the employer can still be high. The below bullets highlight some of the key risks and potential consequences of failure to comply with ERISA documentation requirements.

- The law requires a plan administrator to furnish plan documents and SPDs within 30 days of a participant request⁸ which can be difficult if these items do not exist. Penalties of up to \$110/day can apply for failure to comply.⁹
- Courts can impose criminal penalties for willfully violating certain ERISA requirements, including SPD disclosure.¹⁰ Penalties can be up to \$100,000 (\$500,000 for an entity) and 10 years in prison.¹¹
- Courts may apply a less favorable standard in reviewing benefit claims instead of the ERISA standard that generally only overturns an arbitrary and capricious claims denial.
- ERISA requires plan fiduciaries to follow the terms of the plan document¹² which can be hard to do if the plan document does not exist or is unclear.
- Lack of clear plan documentation places the employer at risk in proving plan terms in a benefits lawsuit. Participants may base the suit on past practice or other extrinsic evidence unfavorable to the employer.

Conclusion:

A wrap plan can help a welfare plan satisfy ERISA's plan document and SPD requirements by wrapping around non-compliant carrier certificates and documents and including the necessary ERISA language. In addition, for an employer whose participation level is over 100 participants in multiple welfare plans, the wrap plan can consolidate all of the plans into one document such that only one Form 5500 filing is required, which will reduce the costs of complying with the ERISA Form 5500 filing requirements.

References

- 1 - ERISA §3(1).
- 2 - ERISA §402(a)(1).
- 3 - ERISA §102(a) and 104(b)(1).
- 4 - ERISA §402(b) and §102(b).
- 5 - ERISA §103(a)(1).
- 6 - 29 CFR §2520.104-20(b)(1).

- 7 - 29 CFR §2520.104b-10(a).
- 8 - ERISA §104(b)(4), ERISA §502(c) and 29 CFR §2520.104b-1(b)(2).
- 9 - ERISA §502(c)(1) as adjusted by 29 CFR §2575.502c-1.
- 10 - ERISA §501.
- 11 - Ibid.
- 12 - ERISA §404(a)(1).

