COMPLIANCE LUNCHBOX

UNPACKING YOUR COMPLIANCE OBLIGATIONS

Q&A: ERISA 101 | WEDNESDAY, AUGUST 2, 2017

Your questions answered by Pete Iverson, Esq., our in-house ERISA counsel

Q: What about a buy up option on STD plan?

A: In answering this question, I assume you are referring to an arrangement in which all employees get a basic STD benefit but can purchase an enhanced benefit that may, for example, pay a higher percentage of salary during disability or provide benefits for a longer period. In this case, the presence of employee contributions may cause the arrangement to be considered a "funded" plan and therefore subject to ERISA. Employers with this type of arrangement should consult with counsel regarding its status under ERISA.

Q: Please explain what are considered plan assets and what means holding in a trust (A separate bank account? Controlled by whom?)

A: This is a huge question, and we can't begin to answer it fully in this forum. In the context of a typical employer sponsored health plan, any employee contributions would be considered plan assets. ERISA requires all plan assets to be held in a trust; this is a specific type of legal entity which is separate from the employer and which can only be used to provide plan benefits. However, if the only source of plan assets is employee contributions and those contributions are paid by employees through a cafeteria plan, the DOL has stated that it will not enforce the trust requirement. There is a more detailed discussion of plan assets, as well as funded vs un-funded plans in the dashboard reference material.

Q: My broker won't provide me with the SPD and says I must first purchase an ERISA "wrap" at an extra cost. Why is this?

A: The term "wrap" or "wrap document" does not have an official definition. Informally, it is generally taken to mean a document that incorporates an existing SPD and supplements in with other provisions necessary or desirable to have in an ERISA plan. A wrap can also serve to bundle several benefit arrangements into a single plan. Many employers find it convenient to use a wrap document, but there is no requirement to do so.

Q: If the self-funded plan is consistent with all FTE, can we carve out for Medical Tourism medical transactions?

A: In answering this question, I assume you are using the term "Medical Tourism" to refer to the practice of travelling outside the United States for medical treatment, either because it is cheaper or to obtain goods or services not available in the US. There is no federal law that requires health plans to cover Medical Tourism.

Q: Is there a disadvantage of including a benefit generally NOT considered ERISA within an SPD?

A: You can't subject a benefit that could not be covered under ERISA to ERISA simply by putting it in an SPD. For example, an employee discount on goods and services provided by the employer to the general public in the ordinary course of business would not be an ERISA benefit and putting information about it in an SPD wouldn't change that. On the other hand, some benefits may or may not be subject to ERISA depending on how they are treated by the employer. For example, a so-called voluntary benefit - such as coverage under a daily indemnity policy - for which the employer makes no contribution could qualify as a non-ERISA benefit, but may become an ERISA benefit if it is included in an SPD. Whether that's a disadvantage depends on other facts and circumstances.

Have more questions? Contact us at admin@compliancedashboard.net.

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