Three Common Compliance Issues That Are Easy to Solve

The well-established axiom that "a thorough diagnosis must always precede the remedy" is as true in employee benefit plan compliance as it is in the field of medicine. Whether the diagnosis comes through a comprehensive checklist, a consulting report, or a quick set of questions, finding a point of exposure or non-compliance in an employer's benefit program often leads to a tense moment of dread and concern. After the initial shock wears off, most employers quickly move to the question: "What is the remedy for this?"

Regardless of the issue, the good news is most compliance problems have readily available solutions. Below are three common compliance issues we see regularly in our day-to-day work with employers across America, along with the remedies that are generally recommended.

Issue #1: A Cafeteria Plan with a Shorter Waiting Period for Highly Paid Executives

Although there was a time when this scenario was the standard practice in many industries, today's IRS nondiscrimination rules have rendered it untenable. Nevertheless, many employers would like to offer benefits to highly paid executives on or near the first day of employment while requiring lower paid employees to satisfy a waiting period. Is it still possible to attract and reward executives in this way? In the case of fully insured benefits, the answer can sometimes be changed from "No" to "Yes."

The solution: embrace a post-tax paradigm. A slight variation in approach allows an employer to avoid violating IRS nondiscrimination requirements by initially enrolling executives outside of the cafeteria plan, *with all premiums paid on a post-tax basis*. Later, after these employees have completed the same waiting period that is imposed on other, non-highly compensated individuals, they can enroll in the cafeteria plan. In this way, all employees obtain access to the cafeteria plan's nontaxable benefits on the same terms. Although the executives' tax burden will be modestly increased for a short period of time, they will be able to receive benefits without causing the cafeteria plan to automatically fail nondiscrimination testing.

Issue #2: Life Insurance Plans without Form 5500 Filings

A non-contributory life insurance program is a useful perk that is offered by many employers. All benefit eligible employees are automatically enrolled with a minimum coverage amount that may be voluntarily increased with an added premium. However, the ERISA status of this type of plan sometimes goes unnoticed, and it is common for employers initially reaching 100 covered employees[1] to overlook the required form 5500 filing. While enrollment counts for major medical and other coverage lines are usually monitored closely, basic life plans often receive less attention. Many employers do not realize that these plans are generally subject to ERISA.

The solution: vigilance and retroactive remediation. Employers that are subject to ERISA and are nearing the threshold of 100 benefit eligible employees should watch enrollment counts carefully to ensure all required form 5500 filings are submitted to the Employee Benefit Security Administration (EBSA), a division of the Department of Labor (DOL) that is responsible for the enforcement of ERISA. In the event one or more filings have been missed, the EBSA's Delinquent Filer Voluntary Compliance (DFVC) program offers significant relief. Under this program, the employer agrees to submit filings for all years that were neglected and pay a reduced penalty amount. Penalties are reduced from a potential maximum rate of $2,400 per day[2] to $10 per day, with an annual maximum of $2,000 per plan, and an overall maximum of $4,000 per plan. Although these reduced penalty amounts are not insignificant, they are much lower than the penalties that might be imposed under an EBSA audit.

Issue #3: Incomplete SPD Distribution

As the popularity of "stand alone" wrap documents continues to grow, employers of all sizes are adopting ERISA documentation in increasing numbers. As a part of the process, many learn about Summary Plan Description (SPD) distribution rules for the first time and seek to comply through an electronic distribution method. However, employers often do not realize that the "stand alone" wrap document is designed to *accompany* and *complete* carrier-provided documentation rather than replace it. Certificates of coverage and similar documents are typically incorporated into the wrap plan by reference and must be distributed along with the wrap SPD.

The solution: complete distribution. Simply add the insurance carriers' booklets to the materials that are distributed and be sure the distribution method meets all DOL guidelines. Keep detailed records and distribute these items in a way that is calculated to result in actual receipt of the documents by all applicable employees.

---

[1] Note that the "small plan exemption" generally applies to plans that have less than 100 participants on the first day and are not associated with a trust. Plans that are "funded" (under ERISA's special definition) or associated with a trust generally must file regardless of the number of participants.

[2] This is the maximum daily penalty amount for 2022. ERISA penalties are adjusted in January of each year (generally in an upward direction).

In Conclusion

Compliance is complicated. It is difficult for employers to stay fully up to date with rules and standards that seem to constantly change. Not surprisingly, compliance issues are common, even among employers that are making strong efforts. Consultants who can identify compliance problems and present solutions for their clients will find more opportunities coming their way. Opportunity is always drawn to a problem-solver.

"How you define a problem makes a huge difference in your ability to solve it. That's because seeing a problem as an opportunity does more than calm your emotions; it opens your eyes to options."
– John C. Maxwell

(Source: http://blog.johnmaxwell.com/blog/problem-solving-101-solve-the-problem-before-the-problem)

We hope this information is helpful to you. Please give us a call if we can be of assistance to you with Health & Welfare Compliance, Actuarial Services, Healthcare Reform, HIPAA Security, and COBRA/Retiree Billing Administration.

CONTACT US:
Sales@medcombenefits.com
www.medcombenefits.com
(800) 523-7542