

ISSUE 27, SUMMER 2019

CONFERO

MAGAZINE

BLIND SPOTS IN YOUR RETIREMENT PLAN

A quarterly publication of Westminster Consulting, LLC





IS IT TIME FOR YOUR **EMPLOYEE BENEFIT** PLAN CHECK-UP?

By Kriste Naples-DeAngelo, Partner
Brenda DeSaro, Senior Manager

Introduction

Employee benefit plans can be a wonderful tool to attract new talent or reward and retain existing talent. And, much like encouraging your employees to have annual check-ups to remain healthy, you should do the same for your employee benefit plan.

So how healthy is your plan?

A best practice is to schedule a periodic review of your plan, at least annually, to make sure it complies with any changes in laws or regulations. Also, examine the plan provisions to verify they are being applied appropriately in their day-to-day operation.

Having a good physician makes a big difference in a patient maintaining good health. The same logic applies to an employee benefit plan. It is imperative to select the right people for plan management and the plan committee. The most successful plans are managed by people who

understand the importance of and take their roles seriously. Here are some additional best practices for maintaining a healthy employee benefit plan:

- Identify plan fiduciaries and clearly designate each one's responsibilities. Does the plan need more than one committee? Plans often have an administrative committee and an investment committee, each with their own set of bylaws that must be understood and executed.
- Provide annual fiduciary training.
- Meet regularly and document all decisions regarding plan operation and investment decisions.
- Hire qualified third-party providers as necessary such as a custodian, record keeper, investment advisor, ERISA attorney and auditor. It is crucial

In addition, there is an "80/120 participant rule" where if your participant count is between 80 and 120, and a Form 5500 annual return/report was filed for the prior plan year, you may elect to complete the return in the same category ("large plan" or "small plan") as was filed for the prior return. To simplify this, if your plan has always been small (less than 100) and your participant count stays between 100 and 120, your plan won't need an audit.

Note: Failure to include an audit with your 5500 filing will lead to a letter from the Department of Labor ("DOL"), which may include monetary penalties.

"FAILURE TO INCLUDE AN AUDIT WITH YOUR 5500 FILING WILL LEAD TO A LETTER FROM THE DEPARTMENT OF LABOR ('DOL'), WHICH MAY INCLUDE MONETARY PENALTIES."

that you retain these experts. Similar to your personal health choices. You would not go to a dentist for a medical issue. Surrounding yourselves with experienced people will make all the difference in keeping your plan healthy.

- Regularly review and document all providers.
- Be aware if your plan needs an audit.

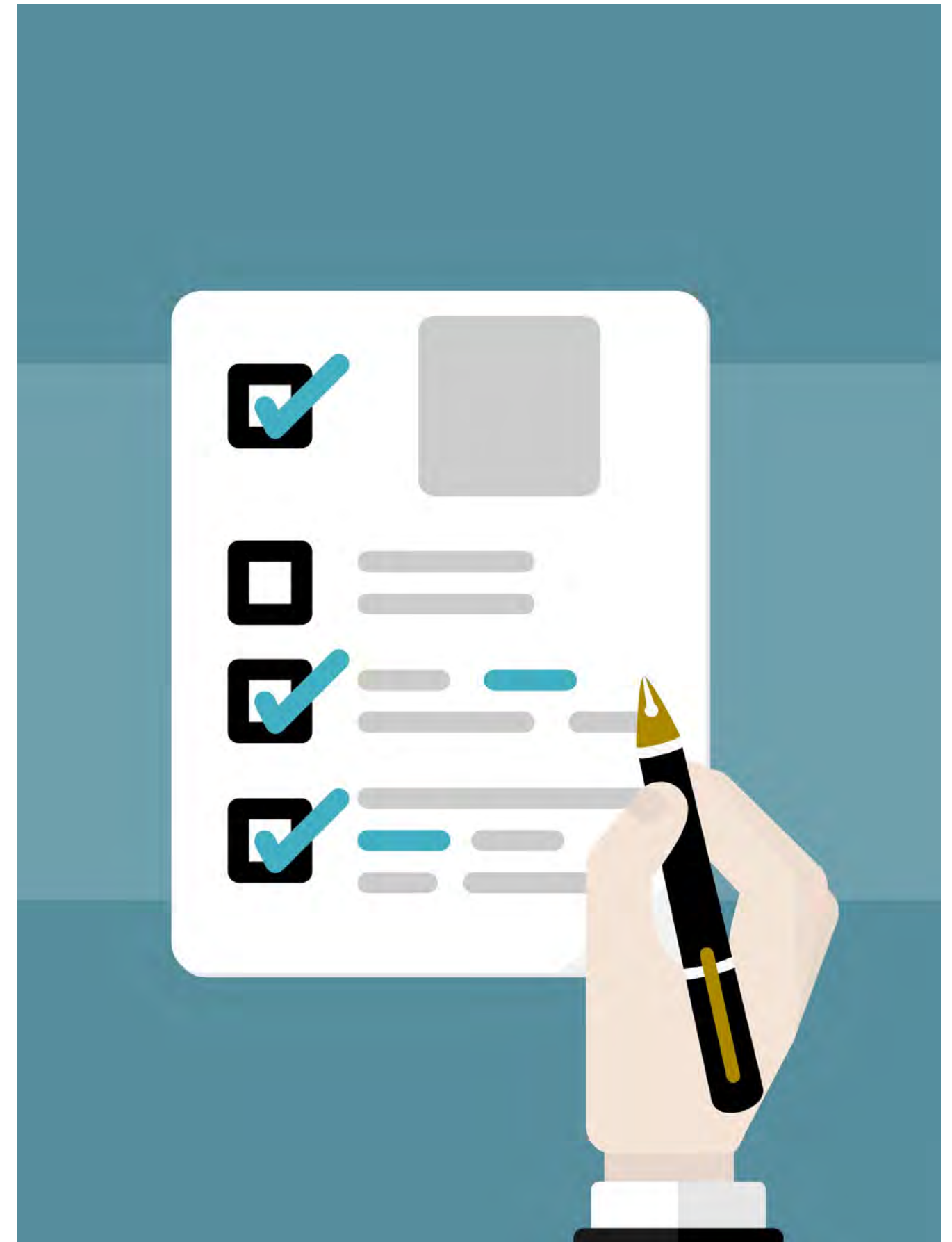
Calculating Headcount

We often see plans that have filed a Form 5500 that should include an auditor's report, but have failed to do so because plan management simply did not know the rules and were not monitoring employee headcount. Calculating headcount can be complex if you do not understand how to determine the audit requirement. It is determined on the first day of the plan year and, generally, an audit requirement is triggered if the number of eligible participants exceeds 100. Plan sponsors often incorrectly calculate participant numbers because they do not understand the definition of "eligible." It is the date that you become eligible to participate in the plan (whether you are a participant or not), if you contribute to the plan, or if you terminate but continue to keep funds in the plan.

Common Non-Compliance Symptoms

Mistakes and errors (aka operational defects) in employee benefit plans can and do occur. We refer to them as the terrible 3s as they tend to be the most harmful to a plan's health.

1. Failure to use the correct definition of compensation as defined in the plan document. Your plan document may have multiple definitions of compensation as the basis to calculate salary deferrals, matching contributions and employer discretionary contributions. There may also be a provision to be employed on the last day of the plan year in order to receive the employer match or discretionary contribution. How can you prevent an erroneous definition of compensation?
 - Carefully analyze the plan document to determine such provisions are being followed in the plan's daily operation. Refer back to the document to confirm how something should be treated.



- Communicate to any service providers or personnel, such as an outside payroll provider or your in house payroll department, when the definition of compensation changes so that they can update payroll codes accordingly.
2. The next health check should be your eligibility provisions. Many plans outsource the determination of eligibility. This can only be completed accurately by having the correct employee population. We typically find four basic errors:
 - Allowing participants who are excluded per the plan provisions, such as part-time or temporary employees.
 - Allowing participants to enter the plan prior to meeting the eligibility requirements, such as age or service requirements.
 - Not allowing eligible participants into the plan on a timely basis.
 - Not following the eligibility provisions with regard to elective deferrals, employer match and discretionary contributions. Similar to the different definition of compensation, there could also be different eligibility requirements for when employees can make an elective deferral and when they will be eligible for an employer contribution.
 3. The last of the terrible 3s is untimely employee contributions. Participant contributions (deferrals and loan repayments) constitute plan assets, and an employer is required to segregate employee contributions from its general assets as soon as practicable. But in no event shall the date occur later than the 15th business day of the following month in which amounts are contributed by the employee or withheld from the wages. However, a big misconception is that the 15th business day is a safe harbor. People tend to focus on the number 15 and not the “as soon as administratively possible.” It is advisable to determine what your “as soon as administratively possible” means for your plan, taking into consideration the number of payroll cycles (e.g., weekly, biweekly, bimonthly, monthly,) and the number of locations.

Confero Summer 2019: Blind Spots
Used with permission of
Westminster Consulting, LLC

Once you have determined the earliest that you can submit the payment to the trust, then document your remittance process and consistently follow it consistently. Remitting contributions beyond the reasonable timeframe is a prohibited transaction that must be reported on Form 5500 and in the plan’s financial statements. Plan sponsors must take this very seriously because the DOL views this as a loan to the employer from the plan. To correct a late remittance, the plan sponsor must make the affected participant’s accounts whole and put it in the position as if the remittance was timely. The plan sponsor has to calculate lost earnings for each participant’s deferrals and loan payments affected by this late deposit. This calculation can be extremely burdensome and take a considerable amount of time, which often results in a small amount. Nonetheless, there is no material or minimum amount whereby a correction would not be appropriate.

Having an employee benefit plan can be an excellent attraction/retention tool for talented employees, but it comes with tremendous challenges and responsibilities in plan administration. Therefore, understanding the obligations and accountability to plan participants is imperative. Plan sponsors must be diligent and pay careful attention to the provisions of their plan to ensure that it remains healthy and compliant.

