

Wrap Plan Document for Welfare Plans

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A “wrap” plan document is a legal document that combines and incorporates, by reference, all group insurance policies and contracts of a plan sponsor that provide welfare benefits to employees into a single plan. Wrap plans are an excellent tool to improve legal compliance and simplify administration of a plan sponsor’s health and welfare benefit plans (e.g., medical, dental, life insurance, and long-term disability).

Most welfare benefit plans are subject to the requirements of the Employee Retirement Income Security Act (ERISA) of 1974. Under ERISA, a plan sponsor must 1) establish and maintain each benefit plan pursuant to a written plan document that contains certain required elements; 2) furnish a summary plan description for each benefit plan to each participant in that plan; and 3) file an annual Form 5500 for each benefit plan.

WHAT CONSTITUTES A PLAN DOCUMENT UNDER ERISA?

For health and welfare plans, the insurance companies insuring or administering the benefit plan typically will supply plan booklets or certificates of coverage. While these booklets and certificates describe the benefits provided under the plan, they frequently do not contain all the elements that are required to satisfy ERISA’s plan document and summary plan description requirements. Further, plan sponsors should be aware that ERISA’s disclosure requirements are the responsibility of the plan sponsor, not the insurance company. If the booklets do not satisfy ERISA’s requirements, it is the plan sponsor that violates ERISA, not the insurance company. In addition, the booklets and certificates generally are not tailored to match the plan sponsor’s actual administrative practices, which are a frequent basis for litigation when a practice is in conflict with the contract providing the benefit.

Adoption of a wrap plan document by the plan sponsor is both important and practical. The wrap plan document will contain explicit language required by ERISA and will also clarify the plan sponsor’s administrative practices, legal obligations, discretionary powers, and right to amend/terminate benefits and plan provisions, etc., thus limiting the plan sponsor’s liability exposure.

STREAMLINING FORM 5500 FILINGS

Generally, a Form 5500 must be filed for each health and welfare plan with more than 100 participants maintained by the plan sponsor. However, since the wrap plan is considered a single benefit plan comprised of various health and welfare benefit components, the plan sponsor is required to file only one Form 5500, with separate Schedules A for each insurance contract maintained for the various health and welfare benefits offered under the wrap plan. Therefore, a significant benefit of the wrap plan document is that it reduces administrative costs by reducing the number of Forms 5500 that the plan sponsor must file. It also reduces the risk of a late or missed filing and the associated penalties.

It is important to note that some plan sponsors believe that they can file all their welfare benefit plans on a single Form 5500 without a written wrap plan document; however, this is incorrect. In the absence of a plan document that combines the benefits into a single plan, the DOL and IRS can assess penalties based on each separate benefit offered by rejecting the filing and requiring that each of the plans re-file separately for all prior years. Thus, if discovered in an audit, the IRS and DOL can impose penalties of up to \$1,100 for each plan and for each day they fail or refuse to file a complete Form 5500 subject to certain maximum penalty amounts (commonly \$30,000 per year and per benefit plan; i.e., missed filings for three benefit plans result in a maximum annual penalty of \$90,000). By adopting a wrap plan document, the plan sponsor documents its decision to treat multiple benefits as a single plan for ERISA.

ADDITIONAL BENEFITS OF A WRAP PLAN

A wrap plan can be customized so that the plan document contains language that matches the employer's administrative practices and provisions that clearly set forth definitions, benefits, and "best practices" procedures, which help protect the employer from liability.

If a plan amendment is required, the employer will need to amend only the wrap plan document, thus simplifying administration and compliance. Without a wrap plan, the employer must adopt separate amendments for each benefit plan affected by the change.

Since the wrap plan is considered a single plan, there is only one summary plan description that needs to be maintained, updated, and furnished to participants, rather than a separate summary for each benefit.

CONCLUSION

With the DOL informally indicating that it will begin reviewing whether plan sponsors that file a Form 5500 for a retirement plan with more than 100 participants are also filing a Form 5500 for their welfare plans, it is more critical than ever for plan sponsors to review the filing requirements related to the welfare benefits they offer employees in order to ensure that they meet these requirements. For plan sponsors with multiple welfare benefit plans, a wrap plan document will make compliance easier and less costly.

If you have any further questions, please contact the authors below:

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