

Welfare Plans: Document, Disclose, Report

by Louise A. Jackson



Below is a sampling of welfare plan issues, including summaries of the topics. What issues are applicable to your company typically depends on factors such as the number of people you employ.

- ***Up-to-date Plan Documentation.*** Do you have all of your plan documentation in one place and is it complete? ERISA requires all welfare and pension plans to be in writing with full descriptions of the benefits offered to employees and how they become eligible for each benefit. In a welfare benefit plan situation, the plan may well consist of a plan document, the insurance company booklet, the union collective bargaining agreement, employee handbook, latest summary plan description, the latest Form 5500 and any other document that bears on plan operations. Employers often think their insured plans are adequately documented with the insurance policy and booklets/certificates issued to employees, but they lack what the ERISA regulations require such as provisions regarding COBRA notices, special enrollment periods and minimum stays after childbirth, just to name a few. There also are recommended provisions such as that the plan does not guarantee employment, the employer reserves the right to terminate the plan and the discretion to interpret the plan terms, and subrogation rights as when the employee is compensated for medical benefits through a lawsuit which benefits have been paid from the employer-sponsored plan.
- ***Use of Wrap Documents.*** Have you considered a wrap document containing information about all of your welfare benefit plans which may include provisions that are not included in the insurance documents but need to be communicated to employees?
- ***Plan Terms.*** Are you following the terms of the plan? You would be surprised how many employers are not, particularly in the areas of employee eligibility, a failure they do not discover until the IRS or Department of Labor auditor brings it to their attention.
- ***Ineligible Participants.*** Are you covering ineligible participants in the company health plan such as children of the company owner who do not work for the company and frankly do not meet the employee eligibility requirements or are there ineligible family members in the plan such as divorced spouses or overage children? As to nonemployee relatives, there is the risk of the insurer disavowing medical coverage of

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the nonemployee who does not meet the usual participant eligibility requirement of being an employee. The lack of coverage will result in potentially horrendous financial consequences if a catastrophic medical event is involved. Substantial medical bills often lead to bankruptcy filing.

As to divorced spouses, you should have procedures in place to put employees on notices on a regular basis about disclosing changes in their marital situations. You sometimes find that out when the person adds a new spouse to the plan and then must disclose that there is a divorced spouse in the plan who has not signed up for COBRA coverage effective after the divorce. These ineligibility “errors” usually do not come to light until there is a catastrophic medical issue which the medical insurer would just as soon as not pay if possible.

- **Disclosure.** For example, when was the last time you distributed an updated summary plan description to participants? They must be furnished every five years if the plan is updated; otherwise, every 10 years. Summaries of Material Modifications are required within 210 days following the end of the reporting year in which they were made, such as eliminating medical insurance coverage of spouses who have available medical insurance offered by their own employers, or reduction in covered services or benefits.

There are a myriad number of notices which must be provided to participants, too many to list here, such as the Women’s Health and Cancer Rights Act (WHCRA) notice. You need to assemble a list so you properly comply.

- **Legal Proceedings.** Do you have a plan procedure for determining the qualified status of Medical Child Support (MCSO) notices?
- **W-2 Reporting of Health Plan Costs.** After enforcement being delayed for a few years, the requirement to report aggregate cost of employer-sponsored health coverage on W-2s is in effect for 2015. Although thought to be exempt from this requirement, there is a limited reporting requirement applicable for payments to multiemployer plans just for 2015.
- **Proper Calculating for Employee Thresholds.** Reporting for welfare benefit plans depends on how many employees the employer has. For example, COBRA is triggered in the case of 20 or more employees. It is important that you know how to calculate the number of employees for purposes of determining the applicability of the various laws in the welfare benefit plan area. Related to that issue, if the employer is part of a group of related incorporated or unincorporated businesses, employees of those other entities may have to be counted in determining whether or not a plan reporting requirement is triggered.

These summaries are necessarily brief. We would be happy to discuss in more detail applicability of a topic which may apply to a particular situation.

Should you have any questions regarding welfare plans, please contact [Louise A. Jackson](mailto:Louise.A.Jackson@eastmansmith.com) or visit our web site www.eastmansmith.com.

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