

How to Survive a DOL Audit

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Who in your company is charged with ensuring positive results at the end of a Department of Labor (DOL) audit? Is it human resources, finance or perhaps operations? The challenge of keeping up with the Affordable Care Act (ACA), the Employee Retirement Income Security Act (ERISA), the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Internal Revenue Code and so much more is enormous, and one inaccuracy or misstep could lead you down the path to potentially large penalty assessments.

Looking Back: Did You Do What Was Necessary to Comply With ACA?

Under ACA, plan sponsors had to comply with several mandates that were implemented over a period of several years. If you missed just one of these, how would that impact your DOL audit outcome? Bottom line: most likely not positively!

Let's look at some mandates DOL might review upon audit:

- Grandfathered notice or patient protection notice
- Summary of benefits and coverage- Don't forget the glossary of terms!
- Exchange notices
- 90-day limit on waiting periods
- Prohibition on annual dollar limits
- Prohibition on preexisting condition exclusions
- New wellness rules

And don't forget compliance with IRS rules

- Form W-2 reporting
- \$2,500 limit on employee contributions to flexible spending accounts (FSAs)
- Special enrollment rights and annual notice for dependents up to the age of 26
- Reinsurance contributions
- Employer play-or-pay mandate (4980H)
- Forms 1094-C and 1095-C reporting

ERISA Has Been Around Since 1974!

The enactment of ACA in 2010 presented challenges for employers implementing ACA changes as new regulations became effective. While this is true, ERISA has been here since 1974, so what will the DOL auditor be looking for? For employers, the most important document for your ERISA plan is the summary plan description (SPD), which is usually the first item on the DOL auditor's checklist. If you are fully insured, self-insured or a combination of both, having an SPD is critical. A wrap SPD may encompass all ERISA plans, including health, dental, vision, group term life and long-term disability. Don't forget to look at potential unintended ERISA plans such as voluntary short and long-term disability and employee assistance programs (EAP). The SPD must provide participants with plan information including plan benefits and features, funding, claims procedures, election rules and plan eligibility, just to name a few. Plan sponsors also should ensure they have plan documents for FSAs, health reimbursement arrangements and premium-only plans.

What Other Notices or Documents Might the DOL Auditor Request?

- IRS Form 5500, with a penalty of \$2,094 per day (indexed annually)
- Service provider contracts
- Business associate agreements
- Initial COBRA notice and general notice
- Records or logs of claims denied
- Written procedures that provide special enrollment rights
- Children's Health Insurance Program notice
- All documents describing a plan wellness program
- If claiming grandfathered status, disclosure statement and plan terms in effect as of March 23, 2010
- If not claiming grandfathered status, documents on plan coverage of emergency services, preventive services, adverse benefit determinations, internal claims and appeals, external review process and contracts, or agreements with independent review organizations, as applicable
- Documents sufficient to show employee contributions from paychecks
- Compliance with Part 7 of ERISA (Health Insurance Portability and Accountability Act (HIPAA) portability), the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act (WHCRA), Mental Health Parity and Addiction Equity Act (MHPAEA) and the Genetic Information Nondiscrimination Act (GINA), among others

Plan Sponsors Will Need to Be Ready to Respond Within Ten Business Days

The potential of a DOL plan audit should not be considered an evil-just the opposite! Plan sponsors should shift their thinking and use the thought of an audit as a strategic business plan. Plan sponsors should perform an internal audit and consider aligning themselves with experienced partners such as employee benefit advisors or attorney firms to emphasize areas of compliance, stay informed on reform, and discuss potential impacts on organizational changes to their employee benefit plans and ACA/ERISA compliance.