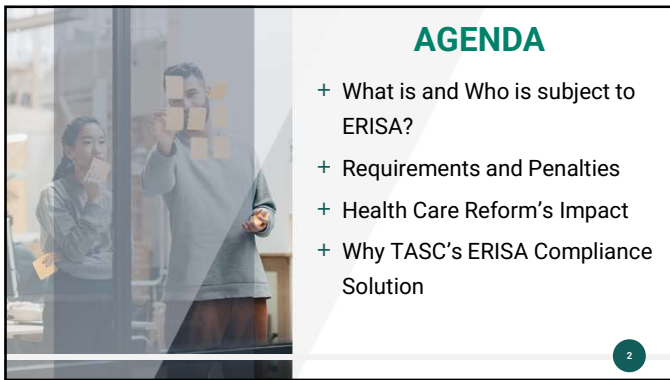
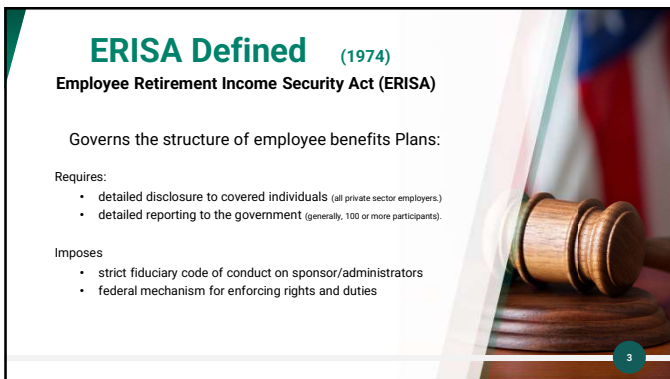




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3

What is a "plan" under ERISA?

"A Welfare Benefit Plan must be:

- A plan, fund, or program
- Established or maintained by an employer
- Established to provide welfare benefits to participants and beneficiaries



4

4

ERISA Titles

"Title 1" Applies to H&W benefits.

7 Parts (5 parts apply to H&W benefits)

- Part 1: Reporting & Disclosure
- Part 4: Fiduciary responsibility
- Part 5: Administration & Enforcement
- Part 6: COBRA and additional standards for group health Plans
- Part 7: HIPAA, Newborn & Mothers Health Protection, Mental Health Parity Act, Women's Health and Cancer Rights Act (WHCRA)




5

5

Employers Subject to ERISA

Private-Sector Employers

- Corporations
- Partnerships
- Sole Proprietorships
- Non-Profit Organizations
(Unless Exempt under 501a as Governmental entity)



6

6

Safe Harbors of Statutory and Regulatory Exemptions

- Governmental and church Plans are exempt from ERISA
- Programs maintained solely to comply with state-law requirements for:
 - Plans maintained outside the U.S. for non-aliens
 - Workers compensation
 - Unemployment compensation
 - Disability insurance



7

Benefits Subject to ERISA

- Health, Dental and/or Vision Insurance or Plans
- Health FSA
- HRA
- AD&D
- GTL
- STD and LTD
- Severance
- Wellness
- EAP
- Group Travel
- Accident
- Voluntary Benefits



8


Voluntary Benefits Safe Harbor

Voluntary Plans

- The employee pays the entire premium
- Employees participation is completely voluntary
- Employer has minimal involvement, does not "endorse" the Plan

Activities considered an endorsement of the Plan:

- Employer encourages employees to participate
- Communications, the employer is "enthusiastic" about the program
- States the plan is part of the benefit package



9

Key ERISA Requirements

- Plan documents
- Terms must be followed
- Strict fiduciary standards
- Fidelity bond for each person handling funds
- Summary Plan Description (SPD) to participants
- Summary of Material Modification (SMM) furnished to participants. (When a Plan is amended within 210 days after end of plan year.)



10

Required Disclosures: Summaries

Summary Plan Description (SPD) provided:

- Within 90 days of start of coverage.
- Within 120 days of a plan becoming subject to ERISA.

Summary of Material Modification (SMM) provided:

- Within 210 days after plan year end of adopted modification
- When a **MM within 5 years** of the material modification.
- **Has not been a MM** then within 10 years of the last SPD.

Summary Annual Report (SAR) provided:

- Within 9 months after the close of the plan year.



11

Required Disclosure: How?

SPDs, SMMs and SARs:

Approved methods include:

- First, second or third class mail
- Special insert into a company or union publication
- In hand delivery

SPDs, SMMs and SARs disclosed electronically:

- Notice of the significance of the document is provided to recipients
- A paper version is made available on request at no charge
- Any confidential information is protected
- The participant has work related computer or consents

Source:
ERISA Sections 104(d)
SOX Reg. Sections 2201-2204-10(a)-10(f)
67 Fed. Reg. 17263 (Apr. 9, 2002)




12

Required Disclosure: Who?

Who Must be Provided an SPD?

- Participants covered under ERISA Welfare Plan,
 - COBRA qualified beneficiaries,
 - parent or guardian under a QMCSO
 - spouse or dependent of deceased retiree who remains entitled to benefits

Not required to furnish beneficiaries



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Other Disclosures: Participants and Beneficiaries

Furnish within 30 days of request:

- Copy of latest SPD and SMM
- Latest annual report
- Any terminated report
- Bargaining agreement
- Trust agreement
- Any contract

Penalties:

- Penalties of \$110 per day for each day after the deadline



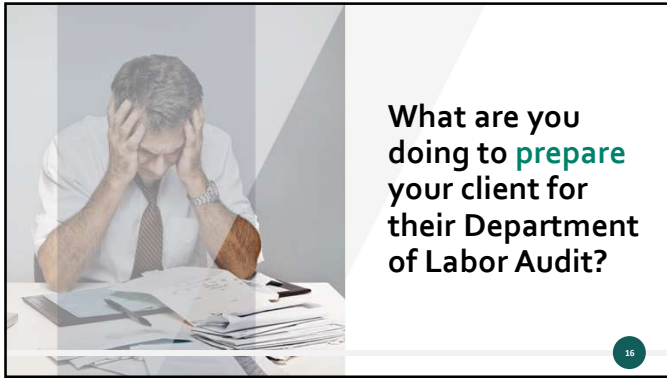
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1 THREATS TO EMPLOYERS

Government Audits & Penalties

15



16

SAMPLE AUDIT LETTER

U.S. Department of Labor
 Wage & Hour Division
 1845 South Street 9th Floor
 Boston, MA 02111
 Tel: (202) 274-1874

DATE: 03/28/2017
 TO: [REDACTED]
 FROM: [REDACTED]
 ADDRESS: [REDACTED]

Re: Wage & Hour Investigation

DOL or Wage & Hour Audit

.....

What does that mean?

Can I be ready in just 10 days (or less)...

and they're coming here!?

DOL or Wage & Hour Audit

.....

What does that mean?

Can I be ready in just 10 days (or less)...

and they're coming here!?

17

SAMPLE AUDIT LETTER

the following information for the last two years for all your locations in Maine ending with your last completed payroll:

1. List of name of the company and all other names used by the company in a "Doing Business As" or trade name.
2. Names, addresses, and telephone numbers of all business owners and company officers (i.e., President, Treasurer, Secretary, Board of Directors and other Corporate Directors) along with the company's organizational chart if applicable.
3. Records demonstrating your annual gross revenue through monthly or bi-monthly statements. Please provide these records for the past three years.
4. Your employer tax identification number (EIN).
5. Complete legal and trade names, mailing addresses and telephone numbers for each business during the same period.
6. A list of all employees for the past three years broken down by location if applicable. Please provide the names, phone numbers, addresses, hourly rates of pay, and dates of hire and termination dates for each employee for the past two years.
7. The start and end dates of the company's FMLA leave year.
8. Contact information for all FMLA administrators used by the company.
9. A copy of the company's most FMLA policies, both an employee handbook and a separate FMLA policy that is provided to employees, with a brief explanation of how and where the policies are provided.
10. A copy of the company's most FMLA policies, both an employee handbook and a separate FMLA policy that is provided to employees, with a brief explanation of how and where the policies are provided.
11. A list of all employee FMLA requests, approvals and denials for the past two years.
12. Any overtime or overtime wage exemptions claimed under sections 1326 and 1328 of the FLSA. Please provide names of exempt employees, a description of job duties and hourly rates or salary for the last two years.
13. Any overtime or overtime wage exemptions claimed under sections 1326 and 1328 of the FLSA. Please provide names of exempt employees, a description of job duties and hourly rates or salary for the last two years.
14. Please include the following information for all employees for the past two years: (include a copy of the most current completed payroll, time card, or other document that shows the actual hours worked, breaks, commission, commission rate, term of, etc. An employee's time card summary by day (date from 01/01/00 to 12/31/00).
15. Time records for the past two years, including records of date and weekly hours worked (by time card/summary).
16. Names and dates of birth for all minors under age 18 employed for past two years and job performed by the company.

DOL or Wage & Hour Audit

.....

Do I even have all the documents and information the investigator is requesting?

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ERISA Reporting and disclosure fines and criminal penalties for employee health and welfare benefit plans:

Form 5500 Annual Return/Report of Employee Benefit Plan
 The DOL may assess a civil penalty of up to \$2,596 per day from the date of a plan administrator's material failure or refusal to file an annual report... For plans that do not take advantage of the DOL's Delinquent Filer Voluntary Compliance Program, DOL has indicated that it will assess a penalty of \$50 a day (with no limit) for late filers, and a penalty of \$300 a day (up to \$30,000 per year) for non-filers. Additional penalties apply for deficient filings. ...

In addition to the specific penalties described in this Section, any person convicted of willfully violating any provision of Part 1 of Title I of ERISA (relating to reporting and disclosure) will be fined up to \$100,000 and/or imprisoned for up to ten years. For a violation by an entity, the fine imposed may not exceed \$500,000. (ERISA Section 501) Any person knowingly making any false statement or representation of fact or knowingly concealing, covering up or failing to disclose any fact required by ERISA (18 USC, Section 1027) will be fined and/or imprisoned for five years.

Department of Labor penalties and fines are significant and have recently increased!

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Employee Lawsuit Judgments

\$4,540 – Employer indifference and irresponsibility led to disclosure violations
 \$5,215 – Employer inattentive in providing Life Insurance Plan Document and refused to furnish copy of Form 5500 to Participant until ordered to by court
 \$5,880 – Failure to deliver SPD within 30 days of request. Minimum fine of \$10/day
 \$9,800 – Failure to provide LTD Plan Document; employer only provided SPD
 \$10,220 – Excessive delay in providing Severance Pay Plan Document
 \$10,560 – Late delivery of SPD to employee after 3 written requests, max. penalty \$110/day
 \$11,550 – Failure to provide SPD after written notice
 \$13,750 – Failure to provide SPD upon written request. Maximum penalty for employer's unresponsiveness and lack of excuse: \$110/day for 125 days
 \$17,475 – Employer did not have SPD, only provided certificate of insurance to Participants repeatedly insisted they were the same thing
 \$17,550 – Failure to provide requested Plan Document and SPD to Participant
 \$18,400 – Failure to deliver SPD on request; \$25 x 736 days; without prejudice or bad faith
 \$26,100 – Failure to respond to document request over very long time
 \$32,850 – Delay, indifference, disregard in failure to provide copy of requested Plan Document to Participant
 \$34,540 – Failure to provide participation agreement between employer and LTD carrier precluded Participant's ability to establish enrollment date
 \$37,650 – Requested documents provided at widely spaced intervals
 \$50,000 – Failure to file Form 5500
 \$55,760 – Incompetence and neglect delivering insurance contracts to Participants
 \$62,250 – Failure to deliver SPD to Participant in manner required by DOL

Employee Lawsuit Judgments and Awards can be substantial!

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DOL ERISA Investigations

Reasons for initiating investigations:

- Participant complaints to Office of Participant Education
- Referrals from other regulators (e.g., SEC, IRS)
- Enforcement initiatives (National Enforcement Projects)
- Form 5500 filings / Employers having 100 or more EE's

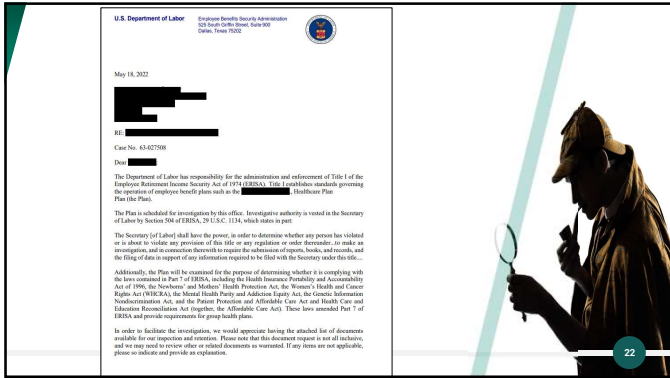
Procedure for DOL investigation

- Initial Letter (Document Request or Appointment Letter)
- Document Production and On-Site Interviews
- Closing Letter:
 - No DOL action to be taken
 - "Voluntary Compliance" notice, or
 - Litigation letter

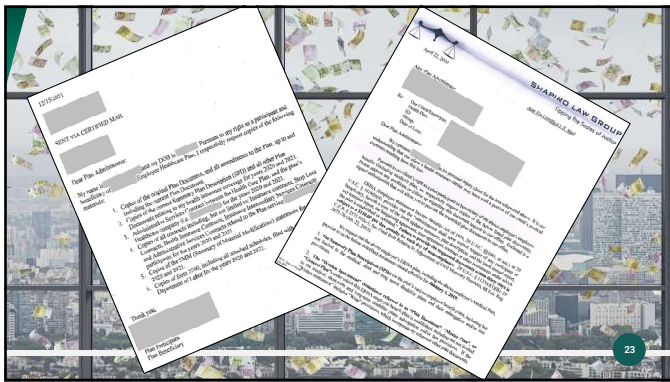


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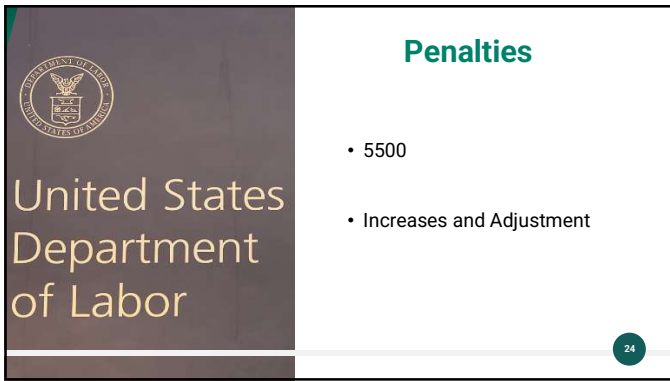
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Annual Form 5500 Reporting

Filing Form 5500 with DOL

- ERISA Plan Administrators report each Plan Year (Unless exempted (small unfunded plans))
- Reporting applies to each ERISA Plan of an employer
- Penalty of up to **\$2,586 per day** for a late 5500 filing
- The DOL has a delinquent filer voluntary compliance program (DFVC program) which caps penalties.




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2023: Increased Fines & Penalties

The Department of Labor published in the Federal Register on June 30, 2016. It made an interim final rule to adjust for inflation the civil monetary penalties and final rule January 12, 2017 enforceable by the Department of Labor.

The DOL reserved the right to increase these penalties each year prior to January 15. Did they?

Subject to change each January.
Adjustment effective January 15, 2023 as published in Federal Registry.



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Highlights: Penalty Adjustments: 2020 - 2023


ERISA Penalty Statute	Description of ERISA Violations	Effective Jan. 15, 2021	Effective Jan. 15, 2022	Effective Jan. 15, 2023
ERISA § 502(c)(2)	Failure or refusal to file <u>annual report</u> (Form 5500)	\$2,259/day	\$2,400/day	\$2,586/day
ERISA § 502(c)(6)	Failure to furnish <u>information requested</u> :	\$110/day	\$110/day	\$110/day
		• by employee: \$161/day • by (DOL): \$1,613/request	\$171/day \$1,713/request	\$184/day \$1,846/request
ERISA § 502(c)(9)(A)	Failure to <u>inform employees of CHIP coverage</u>	\$120/day	\$127/day	\$137/day
ERISA § 715	Failure to <u>provide Summary of Benefits</u>	\$1,190/failure	\$1,264/failure	\$1,362/failure
Section 502(c)(4)	Per day: failure to disclose documents requested	\$1788/day	\$1899/day	\$2046/day

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Reporting and Excise Taxes For Health Plan Non-Compliance

Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code:

- IRS final regulations require employers to self-report violations of these rules and pay related excise taxes.
- Must report health plan compliance failures annually on IRS Form 8928.
- Violations COBRA, HIPAA, GINA, WHCRA, MHPAEA, Newborn & Mothers ACT, etc., can result in excise taxes of \$100 per day per individual affected.



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Health Care Reform's Impact on Benefits Plans



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Medical Loss Ratio (MLR)

Patient Protection & Affordable Care Act (PPACA)

Requires insurers spend a certain percentage of premium dollars on healthcare-related costs

- 85% for large group Plans and 80% for small and individual market
- Insurer does not meet MLR standard required to provide an annual rebate to each enrollee
- The DOL has determined the rebates are Plan assets



30

Medical Loss Ratio (MLR)

- If Plan Document/SPD is silent
 - 100% of the rebate falls under Plan assets
- By adding the terms via the ERISA Plan Document Amendment/Summary of Material Modification (SMM)
 - employers can retain a prorated portion of the rebate equal to the percent of premium the employer paid



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ACA and ERISA SPD

- The ACA document amendment applies to those employers who are deemed an **Applicable Large Employer (ALE)** under the Affordable Care Act
- Employers determined to be ALEs are subject to the employer shared responsibility mandate ("Play or Pay") under Internal Revenue Code (IRC) §4980H



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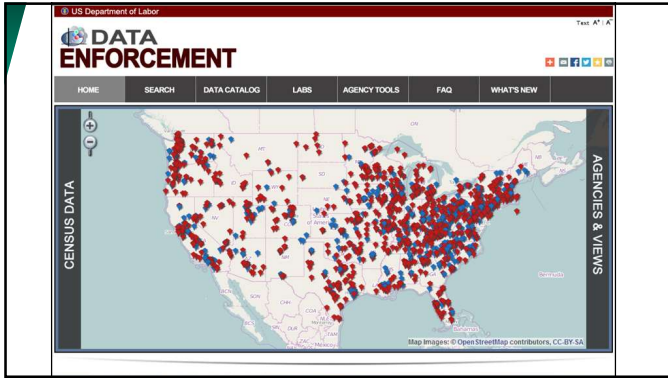
ACA and ERISA SPD

- ALEs track employee and health coverage information
- Penalties apply to employers with 50+ FTEs
- Hours are tracked either monthly or during a measurement period
- The measurement period is a time set by the employer
- Employers must advise employees and include in ERISA SPD

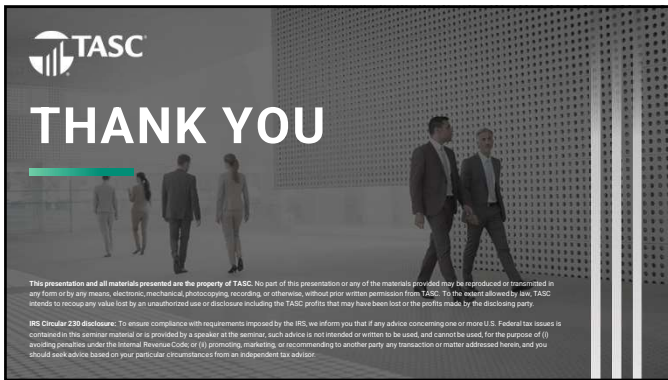


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