

# Spring Cleaning? It's Time for Your Benefit Plan Housekeeping Too

## Labor & Employment Law Update

By Kelly Haab-Tallitsch on March 5, 2014

The number of DOL benefit plan audits held steady in 2013 with the Employee Benefit Security Administration (EBSA) recently announcing that 3,677 civil investigations were closed in 2013, resulting in \$1.7B in corrections, restored plan assets and fines. With that in mind, it's a good time for plan sponsors and administrators to turn their attention to some basic housekeeping.

If the thought of a DOL plan audit makes you nervous, there's good reason! DOL investigations find a failure in over **70 percent** of plan audits. Failures typically result from defects in plan administration or a misinterpretation of plan provisions. There are common areas of risk in an audit and with fewer resources devoted to plan administration, smaller companies often bear the brunt of this risk.

What can you do to minimize risk? Prepare ahead of time. You may not be able to prevent an audit, but you can reduce the risk of fines and penalties and increase the odds that the process will go smoothly.

### **Prepare in Advance**

Plan sponsors should prepare for an audit on an annual basis by reviewing the following:

#### **1) Plan Documents**

With the Supreme Court affirming the plan document's central role in the administration of an ERISA plan (read my post on the case here), your plan document – and adherence to it – can make or break a plan audit. Make sure that plan documents are in compliance with laws and regulations and required amendments have been made.

#### **2) Day-to-Day Operations**

Operations of the plan must be in compliance with the plan document. Make sure that the people running the plan know the plan document inside and out. Compliance with ERISA is largely about having, documenting and following a process. Define roles regarding plan administration and clarify responsibilities.

Address any recommendations from your accountants and engage outside counsel to do an internal review and develop a compliance checklist.

### 3) Plan Records

Get your records in order before a plan audit. Audits can be time-consuming and disruptive to day-to-day operations. To minimize disruption, maintain organized, complete records in a central location.

In addition to copies of plan documents, filings and participant notices, maintain records necessary to show how decisions were made and processes followed. This includes copies of employee contribution records, remittance statements, benefit statements and resolutions from benefit or investment committee meetings.

### Areas of Risk

Two common areas of risk for plan sponsors include Summary Plan Descriptions ("SPD") and Health Insurance Portability and Accountability Act ("HIPPA") compliance.

- **Summary Plan Descriptions** – SPDs have numerous requirements and the rules have changed significantly since their inception, making this a frequent problem area. Most noncompliance is inadvertent and the result of a failure to understand the requirements, such as reliance on an insurance carrier's plan booklet as an SPD (without an ERISA compliant "wrap-around" plan document) or discrepancies between an SPD and plan document.
- **HIPPA Compliance** – The HIPPA requirement that plan administrators inform participants about enrollment rights is an area the DOL focuses in on, as well as the processes for handling personal health information.

With benefit plan audits continuing to rank high on the DOL's agenda, plan sponsors should set aside time in 2014 to prepare for a possible plan review.

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