# ERISA FAQ SHEET

**What is ERISA?**

ERISA stands for the Employee Retirement Income Security Act. It is a federal law that regulates group-sponsored benefits, often called welfare benefit plans. Besides requiring the provision of specific plan features and funding information, the law mandates employers to comply with strict requirements for disclosing plan information to all eligible employees.

**What Employers are Subject to ERISA?**

Nearly all private-sector corporations, partnerships, and proprietorships, including non-profit corporations, must comply with ERISA regardless of their size or number of employees. Churches and government employers are exempt from ERISA welfare benefit plan provisions.

Employers that do not comply are subject to various penalties.

**Which Benefit Plans are ERISA Plans?**

ERISA covers most employer-sponsored plans. Any type of managed plan which includes medical, vision, dental all the way to vacation and scholarship plans are covered. It's important to note that all HSA, Healthcare FSA and HRA accounts are considered ERISA plans.

**Which Plans are Typically Not ERISA Plans?**

ERISA generally does not apply to:

- Cafeteria Plans, Section 125 Plans, Premium Only Plans (POPs), Premium Conversion Plans, or Pre-tax Premium Plans. If the benefits funded by any of these plans are subject to ERISA, these plans should be referenced in the Plan Document and SPD.
- Health Savings Accounts (HSAs), if employers have limited involvement.
- Dependent Care FSAs
- Dependent Care Assistance Plans (DCAPs)
- Transit and Parking Plans
- Adoption Assistance Plans
- Educational Assistance and Tuition Reimbursement Plans
- Paid Time Off Plans
- Medical Clinics on-site to provide first aid

Note, even minimal sponsorship or endorsement, like putting the company name on brochures could negate the plan from being exempt from ERISA.

**What is a Plan Document?**

Each welfare benefit plan that an employer provides is subject to ERISA and must have a written plan document that lists all benefits. Employers sponsoring insured benefits must include all ERISA benefits in the insurance documentation.

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Because nearly all plans require a written plan documents, many employers use a "wrap document" to bundle all its benefits into one plan and/or supplement insurance document for convenience and simplicity.

**What is a Summary Plan Description?**

The SPD is the primary document that communicates plan rights and obligations to participants and beneficiaries. It's a summary of the main provisions listed in the plan document.

**How must the plan administrator or employer provide the SPD to plan participants?**

The plan administration or employer is responsible for preparing and delivering the SPD to participants within covered 90 days of them becoming listed, whether or not they request the SPD. Fines can be imposed by the Department of Labor for failure to provide the SPD as required and proof can be important in situations of litigation. SPDs can be sent to participants in a variety of ways, including electronic delivery, first-class mail, and hand delivery.

**Participants are defined as:**

- Covered employees (not required separately for dependents of covered employees)
- Terminated COBRA Participants
- Parents/guardians of minors covered under a qualified medical support order
- Dependents of a deceased retiree under a retiree medical

**What are the penalties associated with non-compliance?**

There are penalties for not distributing plan documents to participants in a timely manner. Just as important, employers must ensure all documentation is ERISA compliant to protect itself from government sanctions and state court lawsuits.

Some states allow participants and beneficiaries to bring "bad faith" lawsuits against administrators and insurers who have denied benefits. Companies that used ERISA language in the plan document, are protected from state lawsuits . There have been many cases where a jury has awarded large sums of money through the state courts for completely preventable non-compliance. The ERISA law limits damages to the unpaid benefits and does not allow for jury trials, which often favor the insured over the insurer.

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