



[COMPLIANCE]

EMPLOYEE BENEFITS: GENERAL AUDIT CONCERNS



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EMPLOYEE BENEFITS: GENERAL AUDIT CONCERNS

Audit Item	Audit Comments
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All Employee Benefit Plans

<p>Plan Documents</p>	<ul style="list-style-type: none"> • Does a Plan document exist? • Has the Plan document been properly updated for all current legal requirements? • Have all amendments been properly signed and dated? • Do participants have an easy way to access the Plan documents? • Has the trust been properly updated or, if a welfare plan, does an exemption from the trust requirement apply? • For retirement plans, is the Plan the subject of a favorable determination letter from the IRS?
<p>Summary Plan Description/Summary of Material Modifications</p>	<ul style="list-style-type: none"> • Has the Summary Plan Description been updated within the past five (5) years? • Do the terms of the Summary Plan Description match the terms of the Plan? • Does all enrollment information provided to participants accurately reflect the terms of the Plan as set forth in the Plan document and Summary Plan Description? • Has the Summary Plan Description been provided to all participants within 90 days of becoming eligible or within 30 days of a request? • Have all summaries of material modification been provided in a timely fashion no later than the 210th day following the last day of the plan year in which the change was adopted? • Are the Summary Plan Description and all plan documents and notices electronically delivered? (If yes, have you had competent ERISA counsel review your processes for compliance with ERISA?)
<p>Enrollment Communications</p>	<ul style="list-style-type: none"> • Do the enrollment materials accurately reflect the terms of the Plan? • Are the enrollment materials electronically delivered? (If yes, see ERISA Electronic Delivery below.)
<p>Form 5500s/Summary Annual Reports</p> <p>(Note: generally not required for welfare plans with less than 100 participants.)</p>	<ul style="list-style-type: none"> • Have the annual Form 5500s with all attachments and exhibits been timely filed? • Has a Summary Annual Report (SAR) been timely provided to each participant and each beneficiary, including COBRA, retirees and beneficiaries under a QMSCO (if applicable)?

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<p>Non-discrimination Testing</p> <p>(401(k) Plan, Self-Insured Group Health Plan, Cafeteria Plans, Flexible Spending Accounts, etc.)</p>	<ul style="list-style-type: none"> • Has all non-discrimination testing been performed for all years? • Does the Plan routinely pass testing? • If the Plan has failed testing, have the appropriate steps been taken to correct the failure?
<p>Contracts for Plan Administration</p>	<ul style="list-style-type: none"> • Have all vendor contracts been reviewed by competent ERISA counsel? • For 401(k) plan and other contracts where fees are paid by participants, have fees been independently reviewed to be reasonable? • Is the contract easily terminable without penalty and assignable? • Does the contract include indemnification for the employer/plan?
<p>ERISA Electronic Delivery</p>	<ul style="list-style-type: none"> • Has a qualified ERISA lawyer reviewed your processes for compliance with ERISA? • Does each person receiving electronically delivered materials have direct, desk-top access to a computer (or laptop) and a printer (note: kiosk or centrally located computers are not sufficient)? • Have delivery steps taken for furnishing documents been reasonably calculated to result in the actual receipt of the documents? • Have you conducted periodic reviews or surveys to confirm receipt? • Have reasonable and appropriate steps been taken to safeguard confidentiality of personal information? • Are electronically delivered documents prepared/furnished in a manner consistent with the style, format and content requirements applicable to the document? • Are paper versions of the electronic document available on request (at no charge)? • Each time an electronic document is furnished, is a notice (electronic or paper) provided to each recipient describing the significance of the document? • Have ERISA's complex rules for delivery to participants who are employees and participants and beneficiaries who are not employees been met (consult with ERISA counsel)?

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401(k) Plans

QDRO and Loan Procedures

- Does the Plan have QDRO and Loan Procedures?
- Have they been followed?
- Do all loan terms meet federal law requirements?

Fiduciary Concerns

- Does the Plan have a plan or investment committee?
- Does the committee meet regularly (at least twice per year)?
- Does the committee work with independent outside advisors to assess plan investments?
- Does the plan have a strong **404(c) program** that includes communication and education and also focuses on properly diverse investments?
- Does the Plan have an investment policy statement?
- Does the Plan have an ERISA bond?
- Does the company maintain a fiduciary policy?
- Have all required disclosure notices been timely provided to participants?

Plan Operation

- Has the Plan operated strictly in accordance with its terms? (Examples: Have proper deferral elections been followed? Have participants been admitted when they satisfy the enrollment requirements set forth in the Plan and Summary Plan Description?)
- Have all deferrals been timely allocated to participants' accounts "as soon as reasonably practicable" and in accordance with Department of Labor regulations?
- Have loan and withdrawal procedures been properly followed?
- Has competent ERISA counsel reviewed the Plan's operation within the last 24 months?

Welfare Plans

Notices

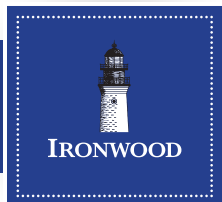
- Have all required notices, including those required by the **Newborns' and Mothers' Health Protection Act of 1996 (NMHPA)** and the **Women's Health and Cancer Rights Act of 1998 (WHCRA)**, been timely provided?
- Is the Medicare Part D Notice timely provided each year?
- Is the **Summary of Benefits and Coverage** timely provided each year?
- Is the **Exchange Notice** provided to all new employees?

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COBRA	<ul style="list-style-type: none"> • Are all required notices up-to-date? • Is the Initial Notice timely provided to all new enrollees at enrollment or within 90 days of commencement coverage? • If the Initial Notice is provided in the Summary Plan Description, have steps been taken to ensure delivery to the non-employee spouse (if covered)? • Is the Qualifying Event Notice timely provided no later than 44 days from the qualifying event? • Is the Notice of Unavailability of COBRA provided no later than 44 days from the qualifying event? • Is the Notice of COBRA Coverage Termination provided as soon as possible after the termination event? • Are participants provided a 30 day grace period to provide premium payments? • Are all COBRA participants afforded the same rights as active employees? • Is COBRA offered for all ERISA group health plans, including health, dental, vision, certain EAPs, Health Reimbursement Arrangements, Clinic access, etc.?
HIPAA	<ul style="list-style-type: none"> • Has the plan undergone a HIPAA audit in the last 3 years? • Does the plan have a HIPAA Policy and Procedure Manual? • Is the HIPAA Privacy Notice timely provided to all participants? • Has the HIPAA Privacy reminder notice been provided every three years? • Does the plan have a Privacy Officer? • Is HIPAA training offered annually? • Are Business Associate Agreements in place with all business associates? • Are all HIPAA privacy protocols strictly observed? • Are breach notification procedures in place?
Affordable Care Act	<ul style="list-style-type: none"> • Has a pay-or-play assessment been completed? • Is the employer appropriately tracking all hours for employees to determine and demonstrate full-time employee status? • Has the Plan Document and the Summary Plan Description been updated to reflect all ACA requirements and any eligibility requirements (e.g., variable hour treatment)? • Are the special COBRA rules for variable hour employees followed? • If the company issues more than 250 W-2s, are the ACA W-2 rules followed? • Are methodologies in place to meet the 6055/6056 reporting requirements (forms 1094 and 1095)? • Are all taxes timely paid (i.e., PCORI, Reinsurance, etc.)?

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This list is non-exhaustive. It is designed to identify leading audit risks. For a comprehensive review of your company's employee benefit plans, please contact Peter Marathas at pmarathas@marbarlaw.com or Stacy Barrow at sbarrow@marbarlaw.com. This audit tool is not designed to provide—and does not provide—legal advice. This is not intended to be attorney advertising.



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