

# SPECIAL REPORT

## EMPLOYEE BENEFIT SUMMARY PLAN REQUIREMENTS

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Most employee benefit plans maintained by private employers, including retirement and health and welfare plans, are governed by the Employee Retirement Income Security Act of 1974 (“ERISA”). ERISA establishes standards designed to ensure that employee benefit plans are created and maintained in a fair and financially sound manner.

**One of the requirements imposed by ERISA is that plan administrators provide participants and beneficiaries with a written Summary Plan Description describing the key benefits, obligations, terms and conditions applicable to the plan in clear, easily understood language.**

Plan administrators who fail to provide an adequate Summary Plan Description to participants and beneficiaries are subject to possible civil and criminal penalties. Additionally, a company’s Summary Plan Description is often an important exhibit in lawsuits between employees and the plan administrator. As a result, employers who administer ERISA covered benefit plans must take time to understand and comply with the Summary Plan Description rules imposed by the Act.

Summary Plan Descriptions (“SPD”) and language interpretation has been a focal issue in a number of ERISA cases. These cases reflect the increasing importance of employers to ensure that SPDs accurately reflect the terms of a master plan document and comply with the minimum standards set forth in ERISA. In addition, they reaffirm to employers that an employer who is a plan administrator cannot rely on an insurance company to provide documentation such as an SPD. If the SPD is not properly distributed, missing required provisions, or provides different information

than in the comprehensive plan, the plan administrator is liable for the ERISA breach and penalties.

The following cases illustrate just some of the exposures that employers face with regard to summary plan descriptions:

- *Haus v. Bechtel Jacobs Co., LLC*<sup>1</sup>

The employer failed to satisfy ERISA disclosure obligations in such a way that the information contained in the SPD conflicted with the plan itself. The court ultimately enforced the terms of the Summary Plan Description against the interest of the employer because the lay beneficiary should be able to rely on the summary document.

- *Crosby v. Rohm & Hass Co.*<sup>2</sup>

The court held that the statements made by the employer in the Summary Plan Description were binding, even where such statements conflicted with the plan itself.

- *Burke v. Kodak Retirement Income Plan*<sup>3</sup>

A retirement plan's SPD violated the ERISA disclosure requirements when it failed to apprise plan participants that they needed to file an affidavit if they wanted their domestic partners to receive pre-retirement survivor income benefits.

- *Watts v. BellSouth Telecommunications Inc.*<sup>4</sup>

A plan participant was not required to exhaust administrative remedies prior to filing a lawsuit against his employer because the SPD could reasonably be read as making exhaustion optional.

The purpose of this Special Report is to outline the required timing and contents of Summary Plan Descriptions and to assist plan administrators in understanding these obligations.

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<sup>1</sup> *Haus v. Bechtel Jacobs Co., LLC*, 491 F.3d 557, 565 (6<sup>th</sup> Cir. 2007)

<sup>2</sup> *Crosby v. Rohm & Hass Co.*, 480 F.3d 423, 425 (6<sup>th</sup> Cir. 2007)

<sup>3</sup> *Burke v. Kodak Retirement Income Plan*, 336 F.3d 103 (2d Cir. 2003)

<sup>4</sup> *Watts v. BellSouth Telecommunications Inc.*, 316 F.3d 1203 (11<sup>th</sup> Cir. 2003).

## **Presentation and Format**

Regulations issued by the Pension and Welfare Benefits Administration division of the U.S. Department of Labor require that a Summary Plan Description be written in a manner calculated to be understood by the average plan participant. The language and format used must take into consideration the level of comprehension and education of the typical plan participant, as well as the complexity of the plan terms.

The format used for the plan must present the plan's benefits, obligations, terms and conditions consistently and clearly. Descriptions of the plan's limitations should be presented in the same manner as descriptions of the plan's benefits. The descriptions must neither exaggerate the plan's benefits nor minimize the plan's limitations. The contents of the Summary Plan Description must be accurate as of 120 days prior to the date the Summary Plan Description is issued.

Plans with a significant number of non-English speaking participants may also be required to make accommodations for such participants in the administration of the plan and in the Summary Plan Description.

## **Required Content**

In general, a Summary Plan Description must be sufficiently comprehensive to notify participants and beneficiaries of their rights and obligations under the plan.

Regulations issued by the Department of Labor set forth specific content requirements which are summarized in the Summary Plan Description Content Checklist included with this Special Report.

## **Timing**

Plan administrators are required to provide all plan participants and beneficiaries with a Summary Plan Description which meets the Department of Labor's style, format and content requirements within 120 days of the date a new plan becomes effective or is adopted, whichever is later.

New plan participants must receive a Summary Plan Description within 90 days of eligibility. An updated Summary Plan Description must be provided to participants and beneficiaries every 10 years if the plan has not been amended. Additionally, a copy of the Summary Plan Description must be provided to the Department of Labor or to a plan participant within 30 days of a request.

## **Changes to Plan**

If the plan or Summary Plan Description is changed, the new information must be distributed to each plan participant, in most cases, no later than 210 days after the close of the plan year in which the change was adopted.

Any material modification to a health care plan that results in a reduction in benefits or services provided, however, must be provided to participants no later than 60 days after adoption of the change. Plan modification information may be provided to participants either in summary form or in a new revised Summary Plan Description.

A summary of material modifications must be written in compliance with the presentation and format rules for Summary Plan Descriptions. Additionally, any time a plan is changed, whether voluntarily or to comply with regulations, a new Summary Plan Description must be issued every five years.

## **Penalties**

A plan administrator that willfully fails to provide a Summary Plan Description as required by ERISA can be subject to a penalty of a fine of up to \$5,000, imprisonment of up to one year, or both. Additionally, civil penalties of up to \$110 per day may be assessed for a failure to provide a Summary Plan Description within 30 days of a request by a plan participant or the Department of Labor.

Perhaps most importantly, however, a poorly drafted Summary Plan Description may function to modify the terms of the under-lying benefit plan.

Court decisions have held that statements or descriptions in a Summary Plan Description may be binding on a plan administrator and/or sponsor even if the statement or description conflicts the terms of the underlying

plan and the Summary Plan Descriptions states that terms of the plan document govern over the Summary Plan Description.

## **Recommendations**

Employers who administer employee benefit plans should:

- Verify that plan participants and beneficiaries have been provided with a Summary Plan Description for all employee benefit plans.
- Review the contents of all Summary Plan Descriptions for compliance with Department of Labor style, format and content requirements.  
Note: A Summary Plan Description Content Checklist is included with this Special Report to assist employers in reviewing the content of Summary Plan Descriptions.
- Seek the advice of legal counsel to review all written benefit information for compliance with Department of Labor regulations.

## **Conclusion**

Summary Plan Descriptions are a critical component of the documentation for any employee benefit plan.

Employers who act as plan administrators must ensure that accurate and complete Summary Plan Descriptions are prepared and issued in compliance with ERISA rules and regulations.

## SUMMARY PLAN DESCRIPTION CONTENT CHECKLIST

### A. All Employee Benefit Plans

Name of the Plan – both the formal name and, if different, the commonly used name.

Name and address of:

- a. Employer – for single employer plans.
- b. Employee organization – for union or other employee organization sponsored plans.

Employer Identification Number for the plan sponsor.

Plan number assigned to the plan by the sponsor.

Type of plan

- a. I.e. Pension Plans – defined benefit, defined contribution, 401(k), profit sharing.
- b. Health and Welfare Plans – group health, disability, pre-paid legal services.

Type of Plan Administration

Name, business address and telephone number of plan administrator.

Name of person designated as agent for service of legal process on the plan and the address at which process may be served.

A statement that service of legal process may also be made upon a plan trustee or the plan administrator.

Name, title and address of the principal place of business for each plan trustee.

A description of the plan's eligibility requirements for participation and benefits.

- a. Pension plans must include the plan's normal retirement age and any other conditions on benefit eligibility and a description or summary of plan benefits.
  - b. Health and welfare plans must include a statement of benefit eligibility requirements and a description or summary of benefits.
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- A statement describing the circumstances that may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery of any benefits a participant or beneficiary might otherwise reasonably expect the plan to provide.
  - A summary of plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated.
  - A summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan upon termination of the plan or amendment or elimination of benefits under the plan.
  - A summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination.
  - A summary of any provisions that may result in the imposition of a fee or charge on a participant or beneficiary or on the account of a participant or beneficiary when the payment of the fee is a condition to the receipt of the benefits under the plan.
  - A statement of the sources of contributions to the plan (i.e. employer, employee or combination contributions) and the method by which the amount of contribution is calculated.
  - Identity of any funding medium used for the accumulation of assets through which benefits are provided and the identity of any insurance company, trust fund, or other institution, organization, or entity which maintains a fund on behalf of the plan or through which the plan is funded or benefits are provided.

The date of the end of the plan's fiscal year.

A statement of ERISA rights (a sample statement is included in DOL regulations).

Please note that additional requirements are imposed on multi-employer plans and plans established under collective bargaining arrangements.

## **B. Health and Welfare Plans**

Where a health insurance issuer is responsible, in whole or in part, for the financing or administration of a group health plan, the summary plan description must indicate:

- a. Name and address of the issuer.
- b. Whether and to what extent benefits under the plan are guaranteed under a contract or policy of insurance issued by the issuer.
- c. The nature of any administrative services (i.e. claim payment) provided by the issuer.

A statement regarding hospital length of stay requirements for newborns and mothers after childbirth (model statement is included in DOL regulations).

A description of the procedures governing claims for benefits, applicable time limits, and remedies available under the plans for the redress of claims which are denied in whole or in part.

- a. The description must include procedures for obtaining pre-authorizations, approvals or utilization review decisions.
- b. The plan's claim procedures may be furnished as a separate document that accompanies the Summary Plan Description so long as the document satisfies the style and format requirements for a Summary Plan Description and that the Summary Plan Description contains a statement that the plan's claims procedures are furnished automatically, without charge, as a separate document.



- A description of the plan's procedures for qualified medical child support orders or a statement indicating that a description is available from the plan administrator without charge.
- A description of any cost sharing provisions, including premiums, deductibles, coinsurance and co-payment amounts for which the participant or beneficiary will be responsible.
- A description of any annual or lifetime caps or other limits on benefits under the plan.
- A statement on the extent to which preventive services are covered under the plan.
- A description of whether or not and under what circumstances existing and new drugs are covered under the plan.
- A statement on whether and under what circumstances coverage is provided for medical tests, devices and procedures under the plan.
- A description of provisions governing the use of network providers, the composition of the provider network and whether and under what circumstances coverage is provided for out-of-network care.
- A description of any conditions or limits on the selection of primary care providers or providers of specialty medical care.
- A description of any conditions or limits applicable to obtaining emergency medical care.
- A statement on any provisions requiring pre-authorizations or utilization review as a condition to obtaining a benefit or services under the plan.
- Plans which use a provider network may furnish the listing of providers as a separate document that accompanies the Summary Plan Description provided that the Summary Plan Description contains a statement that provider lists are furnished in a separate document, automatically and without charge.

- A description of the rights and obligations of participants and beneficiaries with respects to continuation of coverage (COBRA), including information on qualifying events and qualified beneficiaries, premiums, notice and election requirements and procedures, as well as duration of continuation coverage.

### **C. Pension and Retirement Plans**

- A description of the procedures governing claims for benefits, applicable time limits, and remedies available under the plans for the redress of claims which are denied in whole or in part.
  - a. The plan's claim procedures may be furnished as a separate document that accompanies the Summary Plan Description, so long as the document satisfies the style and format requirements for a Summary Plan Description and that the Summary Plan Description contains a statement that the plan's claims procedures are furnished automatically, without charge, as a separate document.
- A description of the plan's procedures for qualified domestic relations orders or a statement indicating that a description is available from the plan administrator without charge.
- A statement describing any joint and survivor benefits provided under the plan, including any requirement that an election be made as a condition to select or reject the joint and survivor annuity.
- A statement indicating whether the plan is insured by the Pension Benefit Guaranty Corporation.
  - a. If the plan is not insured by the PBGC, the reason for the lack of insurance must be included.
  - b. If the plan is insured by the PBGC, a summary of the PBGC coverage (sample statement is included in the DOL regulations).
- A description and explanation of the plan provisions for determining years of service for eligibility to participate, vesting, and breaks in service, and years of participation for benefit accrual.

- A statement on service required to accrue full benefits and the manner in which accrual of benefits is prorated for employees failing to complete full service for a year.
- A summary of provisions relating to the accrual and vesting of pension benefits under the plan on termination.

Please refer to the ERISA regulations found at 29 CFR 2520.102-2 and 29 CFR 2520.102-3 for a complete description of the contents requirements of a Summary Plan Description.

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