

HRWS TRENDING

SPECIAL REPORT



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IN THIS ISSUE:

ERISA DOC REQUESTS:
NOT ONLY THE DOL YOU
NEED TO WORRY ABOUT

CASE STUDIES

ERISA PENALTY CHART

support@hrworkplaceservices.com

HRWorkplaceServices.com

866.691.7757

16679 N. 90th Street Suite 100
Scottsdale, Arizona 85260

HRWS
HR WORKPLACE SERVICES

ERISA DOC REQUESTS:

IT'S NOT ONLY THE DOL YOU NEED TO WORRY ABOUT

Now it's the workers' comp and labor attorneys who want to see the employee's file, your handbook and all of your ERISA Plan documents ...

When it comes to ERISA Plan Documents, most employers immediately think, "I better get these in place or risk a DOL audit or fine." While this thought is not incorrect, a new player is now paying close attention to those ERISA documents, required for your retirement/pension and Health & Welfare plans.

Enter the Attorney

Over the last two years, the HRWS Consulting team has seen a huge uptick (multiple per week) in the number of requests being made for copies of ERISA documents (Summary Plan Descriptions (SPDs), Summary of Material Modification (SMM), 5500 filings, etc.)

A Trend on the Rise

Employment and workers compensation attorneys, hired by disgruntled ex and current company employees, are requesting ERISA Plan documents at an alarming rate. And it is NOT because their client had a problem with the company's ERISA Plan. Rather, these attorneys know that assessed ERISA violation penalties can be huge. For example, fines for not distributing an SPD for a plan can accrue at rates up to \$110 per day, per participant, while failure to file a Form 5500 can generate a penalty assessed at up to \$2,194 per day.

So What's the Attorney's Objective?

Understanding the large penalty dollars involved (if the documents do not exist

or procedures have not been followed), the attorney will then explain why it is in the employer's best interest to "settle with their client," or otherwise, be reported to the DOL for failure to comply with ERISA guidelines.

What Types of Companies Can This Affect?

The HRWS Consulting team has assisted companies from as small as ten employees through Fortune 500s, across hundreds of industries, by both preparing ERISA documents and helping to answer requests made by the attorney of the former or current employee.

It's Accident Attorneys, Too

The HRWS team has worked with employers that have been contacted by accident attorneys, even if an employee was hurt off the job. These attorneys understand that there are still many employers that have not met their ERISA requirements, and they might be able to use that knowledge to procure additional funds for their client - in theory, to cover things like deductibles, co-insurance or even a lack of paid sick time.

So What Should an Employer Do?

Consult with your employee benefits broker and/or financial representative to develop a proactive compliance strategy. HRWS assists brokers and their clients with a multi-tiered program providing live advice from ERISA/ACA experts, customized document preparation and timely distribution - all to ensure that companies are prepared, compliant and worry-free.

HRWS TRENDING

ERISA CASE STUDY #1

Company Size: 60 employees

Region: East Coast

HRWS Client: No

Court Case: Yes. U.S. District Court for the Western District of North Carolina (Kinsinger v. Smartcore, LLC (August 26, 2019))

Reported Issue:

It was alleged that employer failed to fund the claims payment account for its self-funded group health plan and that the claims administrator canceled its services, leaving several covered individuals with unpaid medical claims.

As part of trying to get their benefits paid, the plaintiffs' attorney requested that the employer provide specific documents including the plan, SPD, medical provider contracts, and any others by which the plan was established or operated.

Timeline:

Employer (company administrators) received the request on June 7, 2016. However, they failed to provide the requested documents until July 25, 2018 (748 days after the 30 allowed by

law) – and only in response to plaintiffs' discovery requests in their lawsuit against the employer seeking among other things, payment of the unpaid benefits.

Ruling:

The court awarded plaintiffs \$55 per day for 748 days for a total of \$41,140.

Interesting Court Notes:

In deciding on the \$55 per day penalty, the court explained that plaintiffs were substantially prejudiced by the administrators' failure to provide the documents because they were "left in the dark" on how to appeal the plan's refusal to pay their benefits. Further, the court said it hampered the plaintiffs' ability to litigate its benefits case. They concluded this demonstrated the administrators' willingness to exploit plaintiffs' lack of documents, and the litigation evidenced their bad faith. The court further noted:

- ▶ Even if the administrator had (prior to plaintiffs' request) provided required documents (as claimed by the administrators), they were obligated to provide them again when they received the written request.
- ▶ *The purpose of the up to \$110 per day penalty is not to compensate a plaintiff but to punish noncompliance with ERISA.*





ERISA CASE STUDY #2

Company Size: 200-500 employees

Region: Southeastern United States

Court Case: No

HRWS Client: Yes

Reported Issue:

Company received a letter from a personal injury attorney representing one of its current employees injured in a non-work-related accident. The letter asked that the company provide all necessary documentation to demonstrate ERISA compliance. Specific details were requested by the inclusion of excerpts taken from the DOL's ERISA compliance audit letter.

The attorney is requesting a significant settlement for both client and law office, with the promise to not disclose ERISA non-compliance issues with the DOL or any other agencies.

Timeline:

The letter included a 30-day demand for response.

Legality:

There is nothing prohibiting the law firm from requesting such documents. In fact, these two sections of ERISA speak directly to the issue:

ERISA Section 104(b)(4) requires that a plan administrator must, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

And ...

ERISA Section 502(c)(1)(B) provides that if the administrator fails to provide requested documents within 30 days, a court may hold the administrator personally liable to the affected participant or beneficiary for up to \$110 per day for each violation.

HRWS Actions & Update:

Upon receiving the letter, the company immediately contacted their insurance broker for direction. As an active HRWS client, the broker assured the company that HRWS had everything on file as a part of their Compliance Package and suggested that their client contact HRWS directly.

The HRWS Compliance Team took immediate action by requesting a copy of the letter. Having created all the company's ERISA documents for them over the last several years, HRWS was able to quickly provide the necessary documentation, requested by the attorney along with employee distribution records. To date, no further ERISA/documentation questions have been fielded by the accident attorney or any related agency.

ERISA PENALTY CHART

MAXIMUM EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) NON-COMPLIANCE PENALTIES

COMPLIANCE PLAN	PENALTIES
Plan Document/SPD	Up to \$110 per/day, per employee
Annual Form 5500	Max. penalty of \$2,194 per/day
Summary of Benefits and Coverage (SBC)	Max. of \$1,156 for failure
Children's Health Insurance Program (CHIP) Notice	Max. of \$117 per/employee
Genetic Information Nondiscrimination Act (GINA)	Max. of \$117 per/ participant, per/day