

# Employee Benefits Report

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## How to Meet Your Summary Plan Description Requirements

Have you ever wondered whether your company's benefits summary plan descriptions (SPDs) do an adequate job of informing your employees about their benefits? Read on to find out what your SPD should include...and how to improve it.



The Employee Retirement Income Security Act (ERISA) requires that administrators of a covered employee benefit plan furnish to each participant and beneficiary a summary that tells them what the plan provides and how it operates. The SPD provides information on when an employee can begin to participate in the plan, how service and benefits are calculated, when benefits become vested, when and in what form

benefits are paid, and how to file a claim for benefits.

At the minimum, here's what your SPD should include:

- In the case of a group health plan, whether the health insurance issuer is responsible for the financing or administration (including payment of claims) of the plan and if so, the name and address of the issuer
- The name and address of the agent for the service of legal

process, if such person is not the plan administrator

- The name and address of the plan administrator
- The names, titles and addresses of any trustee or trustees (if different from the administrator)
- A description of the relevant provisions of any applicable collective bargaining agreement
- The plan's requirements respecting eligibility for participation and benefits
- Circumstances that may result in ineligibility or denial of benefits
- Source of financing for the plan and identity of the organization through which benefits are provided
- The procedures participants must follow in presenting claims, including notice that the participants may seek assistance or information from the U.S. Department of Labor regarding their rights

## This Just In

The ADA Amendments Act of 2008, signed into law in September, will expand protections for people with disabilities. It **1)** overturns Supreme Court decisions that have eroded protections under the Americans with Disabilities Act; **2)** makes it clear the ADA is intended to provide broad coverage; **3)** prohibits employers and others from considering "mitigating measures" in determining whether an individual has a disability; **4)** covers people who experience discrimination based on a perception of impairment regardless of actual disability; **5)** requires reasonable accommodations only for individuals who can demonstrate they have an impairment that substantially limits a major life activity, or a record of such impairment.





## 419(e) Welfare Benefit Plans May Be Worth Considering, Despite Diligent IRS Oversight

Ever since the IRS released its stern revenue ruling last year concerning Section 419 Welfare Benefit Funds (Revenue Ruling 2007-65), some companies have been reluctant to adopt a 419(e) plan. However, when implemented correctly, 419(e) plans can provide benefits for both employee and employer.

**W**ith Revenue Ruling 2007-65, the IRS ruled as abusive Section 419 welfare trusts that bought cash value life insurance on the business owners (and sometimes other key employees), while purchasing term life insurance policies on other employees covered by the plan. These plans worked on the assumption that the plan would terminate after a number of years and the assets held in trust would be distributed to remaining participants. While non-owners might receive a small distribution, the lion's share would go to those on whom the trust had bought cash-value life insurance — the owners and key employees. As a discriminatory plan, the IRS ruled this type of

plan does not qualify for tax-preferred treatment, despite advocates' claims.

However, when they meet IRS requirements, 419(e) plans have a lot to offer employers and employees alike. A 419(e) plan is a funded plan that allows a single employer to offer "welfare benefits" to employees or their beneficiaries on a tax-deductible basis. Benefits can cover sickness, accidents, disability, death or unemployment — deferred compensation plans, including pension, profit-sharing, stock-bonus or annuity plans are not eligible.

Funds contributed to a properly designed and operated welfare benefit plan are tax deductible, accumulate tax free, and the post-retirement benefits are paid out tax-free.

Here's what a 419(e) can do for your company:

- ✦ **Employees** can receive a variety of benefits tax-free. Depending on how your plan is structured, it can offer life, medical, disability or long-term care benefits, for example, even after retirement.
- ✦ **The owner-employee**, like all employees, has the comfort of knowing there is a death benefit and medical benefit awaiting the owner and his or her family as a before-tax expense of the company.
- ✦ **The company** can offer valuable benefits to reward valued employees at affordable cost—benefits formerly offered only by large employers are now available to small and mid-size companies. The company can use these benefits as "golden handcuffs" to stem turnover of expensively trained and valuable employees. The employers' contributions are deductible as long as the plans meet IRS requirements; contributions are more affordable with before-tax dollars to the extent deductible.

### 419(e) Compliance Tips

- ✦ The 419(e) plan must cover all employees and cannot discriminate in favor of key employees. The IRS has warned that it may issue guidance on plans that provide post-retirement medical and life insurance benefits to key employees in the future. It cautions that "taxpayers should not assume that the guidance will be applied prospectively only." Translation: you may be taxed retroactively!
- ✦ Your plan cannot offer severance benefits.
- ✦ A universal or whole life insurance policy can't be used if the company is only offering life insurance as a welfare benefit. Term insurance must be used.
- ✦ Cash value insurance is more costly than term life and may be considered an excessive tax deduction by the IRS if the fund is directly or indirectly a beneficiary of the policy.
- ✦ The actuary should use the conservative level annual cost method, which looks at the cost per individual in determining the total cost of the insurance used in the plan. ■

419(e) plans have downsides as well. Contributions to the plan might not be fully deductible (such as where death benefits are provided) and discrimination among employees is prohibited (such as where medical benefits are provided). Also, these plans are somewhat complex and require the services of an actuary to certify funding and



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and the remedies available under the plan for redress of denied claims.

- ✦ A description of the rights, protections and obligations of participants and beneficiaries with respect to receiving information about the plan, COBRA continuation coverage if applicable, how to enforce their rights and how to get assistance with questions.

If a plan changes, the administrator must inform participants either through a revised summary plan description or in a separate document, called a summary of material modifications, which also must be given to participants free of charge.

But that's not all. In addition to the summary plan description and changes, you must give participants in pension and welfare plans a copy of the plan's summary annual report each year. This is a summary of the annual financials that most plans must file with the Department of Labor. You might know it better as Form 5500. (Per the IRS, "fully insured or unfunded welfare plans covering fewer than 100 participants at the beginning of the plan year are eligible for a filing exemption.")

### Readability Counts

Even if your insurer provides SPDs, are they understandable? Should you rely on them to provide all the benefits information your employees need?

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benefit amounts. Nonetheless, 419(e) plans allow your firm to tailor an employee benefit plan to your specific needs and offer flexible funding options.

### Bottom Line

A 419(e) provides companies another way to fund benefits. In order to avoid unwanted tax liability, however, you must make sure your plan provisions and management comply with IRS rules. To avoid compliance problems, please consult a tax professional. ■

## Professional Communications Help

**S**PDs are but one of many written employee communications your company must distribute each year. Many advisory firms can assist you with benefits communication services, including SPDs. Most firms will start by working closely with you to develop an understanding of your benefits objectives, your company's approach to communications, and general benefits environment. Among the typical services offered are:

- ✦ **Enrollment planning.** Firms assist with developing communication strategies, enrollment timelines, and identifying resource requirements.
- ✦ **Benefits communication and education.** Consultants conduct group and individual meetings, prepare brochures and employee benefits statements, conduct benefit surveys, develop online resources and train HR staff.
- ✦ **Enrollment services.** Firms offer trained enrollers to conduct on-site meetings and multi-location enrollments, featuring interactive, consistent benefits presentations. Consultants also conduct meetings for employees, management and even family members, along with providing updates and enrollment support as needed for new employees.

An Internet search on "benefits communications consultants," or "benefits communications services," should lead you to a few reputable providers. Or call us and we'll help. ■

After reviewing 40 randomly selected health plan SPDs, researchers at the University of Nebraska-Lincoln College of Law in Lincoln, Neb., found that the average SPD is written at a college freshman reading level — with some parts at a graduate-school level.

The Employee Retirement Income Security Act of 1974 requires SPDs to be written in language "clear to the average plan participant." However, because SPDs have to hold up in court, they are, by necessity, written or

at least reviewed by lawyers, possibly leading to convoluted language.

Bottom line: If your company produces its own SPDs for a self-insured plan, have a benefits consultant and a team of employees review your SPD for completeness and clarity. If your insurer produces them, make sure it provides supplemental information in clear language to help employees understand what exactly their benefits are and how to file a claim. ■

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(TPA). TPAs can also help employers set up their self-insured group health plans and coordinate stop-loss insurance coverage, provider network contracts and utilization review services.

Any payments made by employees for their coverage are still handled through the employer's payroll department. However, instead of sending them to an insurance company to pay premiums, the employer holds employee contributions until claims become due and payable; or, if being used as reserves, put in a tax-free trust controlled

by the employer.

The best way to determine if self-funding is right for your company is to secure the advice of a benefits expert, preferably one who has experience in serving groups of your size. The consultant will analyze your situation, help develop and assess alternative plan designs and compare and contrast these with plans available in your community and suggest whether self-insurance might or might not be appropriate for you. Please call us for more information. ■





# Is a Self-Funded Health Plan Right for Your Firm?

Half of all workers in the U.S. from companies with 200 to 1,000 employees have an employer self-funded health plan, according to the 2007 Kaiser Family Foundation Survey of Employer Health Plans. But the number is growing among smaller firms as well. According to Kaiser, self-funding for firms with three to 199 employees grew by 20 percent from 2005 to 2007. Is self-funding for you?

**A** self-insured group health plan is one in which your company assumes the financial risk for providing health care benefits to your employees. Sounds risky, but in practical terms self-insured employers often spend less on employee health care compared with those who pay fixed premiums for fully insured plans.

While self-funded plans are not for every company, they do offer a number of benefits:

- ★ You can customize the plan to meet the specific health care needs of your workforce, as opposed to purchasing a “one-size-fits-all” insurance policy.
- ★ You maintain control over the health plan reserves, enabling maximization of interest income — income that would be otherwise generated by an insurance carrier through its investment of premium dollars.
- ★ You don’t have to pre-pay for coverage, thereby improving cash flow.
- ★ Your company is not subject to conflicting state health insurance regulations and benefit mandates, as self-insured health plans are regulated under federal law (ERISA).
- ★ Your company is not subject to state health insurance premium taxes, which are generally two to three percent of the

premium’s dollar value.

- ★ You are free to contract with the providers or provider network best suited to meet the health care needs of your employees.

## Stopgap measures

Self-funding doesn’t have to be an either/or decision. You can self-fund a plan but purchase “stop-loss” coverage to help pay for catastrophic claims, or you can purchase a bare-bones fully funded plan and supplement it with an HRA, an employer-established health reimbursement arrangement that will reimburse employees for medical and dental expenses not covered by insurance.

Self-insured employers can either administer the claims in-house, or subcontract this service to a third-party administrator

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## Self-Funding Rules of Thumb

**S**elf-funding is not for every company. For starters, there are start-up costs associated with plan design and with setting up plan administration. Overall, self-insuring requires more management time than buying and monitoring a group insurance policy. Here are a few rules of thumb:

- ★ **What’s the size of your workforce?** Most experts agree plans work best for companies with at least 100 workers to spread the risk. If you have fewer than 100 employees, you need to understand the makeup of the group and its claims history. The more members, the more easily you will be able to predict claims experience.
- ★ **What’s your turnover rate?** If a large number of employees elect COBRA coverage when they leave, their claims could affect your experience. In the end, high turnover is detrimental because you end up covering those who no longer work for you.

- ★ **What’s your risk quotient?** Small businesses have a significant self-funding advantage; self-insured businesses with 200 employees have a 14 percent probability that actual claims will exceed the projected budget, according to Milliman USA. Compare that to companies with 1,000 employees or more, which have a 26 percent chance of surpassing health insurance budgets. (The discrepancy comes because the larger the number of employees, the more likely that one or two will incur catastrophic health-care costs.)
- ★ **What’s the cash flow?** Evaluate cash flow. Once claims are processed, your company will have to have money available to pay them. Experts suggest you start with at least a two-month reserve on hand. For this reason, self-funded programs are not recommended for small employers and other employers with poor cash flow. It should be noted, however, that there are companies with as few as 25 employees that do maintain viable self-insured health plans. ■