



## The Harrison Group, Inc.

### COMPLIANCE UPDATE:

#### U.S. Department of Labor Investigates ERISA Health and Welfare Benefit Plans

The Employee Retirement Income Security Act of 1974 (ERISA) is a Federal law which, among other things, deals with Employee Benefit Plans and Welfare Benefit Plans. The goals of ERISA are to provide uniformity and protections to employees. ERISA imposes certain reporting and disclosure requirements on employers and failure to comply can result in enforcement actions, penalties and/or employee lawsuits.

ERISA applies to virtually all private-sector corporations, partnerships, sole proprietorships and non-profit organizations.

Recently, regional offices of the Department of Labor have been issuing a revised form of document request when investigating ERISA Health and Welfare Benefit Plans. They have been requesting a broad range of information including Plan Documents, Summary Plan Descriptions Form 5500 with supporting data and other descriptive information. **Information must to be mailed to the Department of Labor within 10 days of their letter. Reasonable, but short extensions have been granted.**

In their letter they mention that the Plan will be examined for the purpose of determining whether the client's Welfare Benefit Plan is complying with various laws including the following:

- Part 6 and 7 of ERISA
- Consolidated Omnibus Budget Reconciliation Act of 1986
- Health Insurance Portability and Accountability Act of 1996
- Newborns' and Mothers' Health Protection Act
- Women's Health and Cancer Rights Act
- Mental Health Parity and Addiction Equity Act
- Genetic Information Nondiscrimination Act
- Affordable Care Act

The DOL is also permitted to share the information which has been submitted with other agencies, such as the Internal Revenue Service.

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Since your client will not have much time to produce the requested information, we suggest that you make sure that your client keeps their documents up to date.

Our focus with regard to Welfare Benefit Plans includes Section 125 Plan Cafeteria Plan and Health Reimbursement Arrangement administration and Form 5500 filing.

To help your clients be prepared for a DOL audit, you should have the following up to date if their Plan has been in existence since January 1, 2010:

### ***Section 125 Cafeteria Plans***

- **Plan Document and Summary Plan Description-** updated for all recent laws including the Affordable Care Act which was signed into law on March 23, 2010.
- **Non-Discrimination Testing-** although not specifically mentioned in their letter, it is quite possible that non-discrimination testing information could be requested.

### ***Health Reimbursement Arrangements***

- **Plan Document and Summary Plan Description-** updated for all recent laws including the Affordable Care Act which was signed into law on March 23, 2010.
- **Non-Discrimination Testing-** Since HRA's are a self-funded health plan, it is quite possible that non-discrimination testing information could be requested.
- **Summary of Benefits and Coverage (SBC)-** HRA's are considered to be group health plans. Although the DOL has not issued a template to be followed, employers are still required, in most cases, to provide an SBC to employees.

### ***Self-Insured Group Health Plans***

- **Non-Discrimination Testing-** Self-funded health plans are required to demonstrate that they do not discriminate in favor of highly compensated employees. If your client does not have this testing performed each year, you should encourage them to do so.

### ***Form 5500***

- **Form 5500 Filing-** If an employer has 100 or more participants in one or more Welfare Benefit Plan at the beginning of its Plan Year, it is responsible to file Form 5500 within seven months after the end of the Plan Year. If your client has not filed Form 5500 for prior years, even though one should have been filed, they may want to consider filing under the **Delinquent Voluntary Filers Compliance Program**.

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### **Wrap Documents**

- **Wrap Document-** An employer that maintains Welfare Benefit Plans which are subject to ERISA, such as group health, dental, vision and other types of fully-insured or self-insured plans is required to have a written Plan Document and Summary Plan Description for each Welfare Benefit Plan. An insurance company's Master Contract, Certificate of Coverage, or Summary of Benefits is not a Plan Document or Summary Plan Description.

The typical way of supplementing an insurance company's Certificate of Coverage is what is referred to as a "Wrap Document". A Wrap Document will wrap around the master Contracts or Insurance Policies to provide missing ERISA provisions.

The preceding information is not the only information which may be requested. [Click here](#) if you would like to obtain additional information.

Please don't hesitate to contact The Harrison Group President, **Rich Miller** at **610-853-9075** or [rmiller@theharrisingrouponline.com](mailto:rmiller@theharrisingrouponline.com) if you have further questions or need additional help compiling the broad range of information requested.

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*February 27, 2013*