



Legislative Update

March 29, 2010

DEPARTMENT OF LABOR INCREASES ENFORCEMENT AND GUIDANCE OVER EMPLOYEE WELFARE BENEFIT PLANS

The Department of Labor's Employee Benefits Security Administration (EBSA) is the federal agency with enforcement jurisdiction over private employee pension and welfare benefit plans under the Employee Retirement Income Security Act ("ERISA"). The EBSA is responsible for ensuring the integrity of the private employee benefit plan system in the United States and has oversight and authority over nearly 2.8 million health plans and a similar number of other welfare benefit plans such as those providing life or disability. When workers experience a problem with an employee benefit plan, EBSA is the entity that may become engaged to assist in their grievances or challenges. In 2009 alone EBSA's Benefits Advisors handled nearly 365,000 plan participant inquiries and recovered \$124.5 million in benefits on behalf of workers and their families through informal resolution of individual complaints filed against their employer's plans.

For fiscal year 2009, EBSA has released a [Fact Sheet](#) reflecting its overall enforcement statistics. According to the Fact Sheet:

- The DOL's total monetary results for 2009 were \$1.36 billion, which included \$407.6 million in assets restored to plans and benefits recovered for individual workers.
- Over 77% of the civil investigations closed in 2009 resulted in monetary results for plans or other corrective action.
- The DOL received 26,603 filings under the Delinquent Filer Voluntary Compliance (DFVC) Program, which provides reduced civil penalties to plan administrators that have failed to file Form 5500s or have filed them late.
- The DOL received 9,897 applications for expedited review of a COBRA premium subsidy denial; 6,886 of those applications were granted, valued at \$8.8 million.

The DOL provides outreach services and [compliance assistance tools](#) to help employers, health plans and health insurers satisfy the requirements of certain federal health laws, such as the Health Insurance Portability and Accountability Act (HIPAA), the Mental Health Parity Act, the Newborns' and Mothers' Health Protection Act, and the Women's Health and Cancer Rights Act. In general,

health plans covered by ERISA are subject to these laws, with certain limited exceptions for small businesses. These and other tools made available by the DOL are a useful starting point to monitor plan compliance, but are not a substitute for a full compliance review.

One of the items the DOL focuses on is the overall plan documentation and compliance with the reporting and disclosure requirements of ERISA. Often many employers of health plans do not have appropriate plan documentation for their plans which meets all of the requirements of ERISA. With the creation of a “wrap plan,” a plan sponsor need only file one Form 5500 with various Schedules A for each insurance contract offered under the wrap plan. Thus, a wrap plan can reduce the number of annual filings which will ultimately reduce administrative costs. As to reporting and disclosure, the DFVC Program is available for plan administrators who need to come into compliance with ERISA’s annual return filing requirements by allowing them to voluntarily file delinquent annual returns with reduced civil penalties. It is critical that a plan sponsor periodically review its health and welfare plans to identify plan compliance and regulatory risks.

Failure to comply with laws and regulations can result in costly fines and penalties. COBRA excise taxes, ERISA penalties for noncompliance, and HIPAA fines may be imposed. As evidenced by their 2009 performance, EBSA is actively involved and becoming more involved in monitoring employer compliance with laws governing plan management. It is believed that their efforts shall only be stepped up in the coming years which means employers can expect more oversight and intervention. It also underscores the criticality of maintaining compliant health and welfare plans.

Conner Strong can assist its clients with developing a strategy for investigating the state of compliance of their plans and prioritizing areas for correction. For more information on applicable laws, please visit our [Benefits Compliance section](#) featuring Conner Strong Legislative Updates that review and summarize health and benefits regulatory news and developments affecting benefits professionals.

**If you have questions or need assistance managing your compliance risks,
please contact your Conner Strong representative toll-free at 1-877-861-3220.**

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