11-16-2011

Information: The Key to Succeeding in Entrepreneurship

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BY STEVE EAGLE  

In 2010 the U.S. Department of Labor launched a five-year strategic plan to increase ERISA (Employee Retirement Income Security Act) compliance on health and welfare benefits. ERISA is a federal law regulating employee- sponsored benefits plans. The act requires employers with various benefit plans such as retirement, 401(k), group medical and other health plans to provide specific information to plan participants. It also requires employers to give the government detailed reports regarding these plans and employee participation. Until this year, the Employee Benefits Security Administration (EBSA), the unit responsible for enforcing ERISA compliance, focused its audit activity on large employer groups, multi-employer group plans and unions. In the past 12 months, the EBSA has added almost 1,000 new auditors, and employer groups targeted for audits now include those with as few as 100 employees.  

With careful planning, diligent record keeping and a thorough understanding of fiduciary responsibilities, employers who receive the audit letters can survive the process and come out stronger. Employers with lax controls, inconsistent plan administration and inexperienced advisors may feel the pain for not keeping their human resources procedures in top shape.  

Audit triggers  

DOL’s 2010 strategic plan establishes new, rigorous performance measures for enforcement activity regarding ERISA and the myriad related laws. In the last 12 months, EBSA conducted 3,112 audits, 75 percent of which cited plan sponsors for one or more violations. Industry observers indicates audit procedures have been generating citation rates at even higher levels, and 2012 results will probably be even higher as more EBSA auditors hit the streets.  

EBSA audits are conducted using a random sampling of benefit plans grouped into classes such as health, pension and defined contribution. In addition to random audits, a number of events can trigger an audit:  

1. Plan participant complaints.  

More than one-third of the audits conducted in 2010 were related to participant complaints to the DOL.  

2. Form 5500 irregularities.  

EBSA can spot potential coverage concerns, particularly with regard to retirement plans, based on low participation levels.  

3. New audit initiatives.  

The DOL has issued a new manual, “Plan Sponsor for its auditors, such as examining participant deferrals to contributory retirement plans.”  

4. Auditors audit.  

EBSA also audits third-party auditing firms such as accountants and TPAs. Irregularities and/or incomplete record keeping at these firms can prompt an employer audit.  

The audit process  

If your firm is audited for ERISA compliance, relax but get ready to put in extra time. The form letter may identify more than 37 separate areas of review for which you will be required to provide supporting documentation. If serious errors are found on the initial review, auditors may ask for documentation going back as far as six years. Cooperate with the auditors and notify your attorneys of a pending audit as soon as you receive the notification letter.  

Penalties for non-compliance  

In the event your organization’s employee benefit practices and plans are found to be non-compliant, request a reasonable amount of time to correct the deficiencies without a financial penalty. Fines and penalties can be substantial, so do not take such discussions or promises lightly. Plan administrators who fail or refuse to comply with annual reporting requirements can be assessed penalties up to $1,000 per day. For those plan administrators who engage in prohibited transactions with welfare and non-qualified pension plans, the penalty can range from five percent to 100 percent of the amount involved in a transaction.  

In some instances, the DOL can file criminal charges against anyone who willfully violates ERISA regulations.  

Conclusion  

There are 708,000 private employer-sponsored retirement plans and 2.8 million health plans in the United States. Statistically speaking, your chances of being audited are minuscule. But why take a chance? Take steps today to be sure your benefit plans are in compliance with ERISA regulations.  

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