

ERISA Compliance

for Health & Welfare Plans



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What's New and Filing Instructions

Enclosed is the 2nd Qtr. 2011 Update Package for *ERISA Compliance for Health & Welfare Plans*—the authoritative ERISA resource for employers, administrators, and advisors.

Valuable Information: Please Circulate! We highly recommend circulating copies of this “What’s New” letter to others in your organization. It contains valuable information about recent ERISA developments and an important summary of key revisions that have been made to the *ERISA* manual.

This quarterly update package includes replacement pages for the Outline and the Appendix, along with our quarterly *Current Developments* newsletter in which we summarize recent legal developments. Please see the filing instructions at the end of this letter for a detailed explanation of what pages to remove and update in your manual.

Subscription Information

Your eBook is available by electronic download. In addition to the enclosed printed pages to update your 3-ring binder version of the manual, you are also entitled to this quarter’s updated eBook version. To download your eBook, go to www.ebia.com; just log in to your My Account page using your EBIA customer account information and follow the instructions. If you do not have an EBIA customer account, go to www.ebia.com/Manuals/eBooks/Access to create one.

Don’t delay! Due to the changing nature of benefits law, this quarter’s eBook will expire (become inaccessible) approximately one month after the next edition is published.

Questions? If you have questions about your subscription, please call customer service at (866) 775-3242.

We have made numerous changes to the Outline. Here are some highlights:

- **Section VI—What Workplace Fringe Benefits Are Subject to ERISA?**
 - VI.D—*Does the Plan Provide the Type of Benefits Listed in ERISA?* We’ve added a new discussion on the impact of offering multiple ERISA benefits through one plan.
 - VI.E—*Are Plan Benefits Provided to Participants or Beneficiaries?* The discussion of plans covering only one employee has been expanded and updated with some new cases.
 - VI.F—*Plans Maintained Solely to Comply With Workers’ Compensation, Unemployment Compensation, or Disability Insurance Laws.* We’ve revised the discussion of workers’ compensation, including new information on whether ERISA applies when an employer participates in a state workers’ compensation opt-out program.
 - VI.I—*Other Regulatory Exemptions.* We’ve added a mention of the ERISA exemption for payroll deductions deposited into holiday funds, and we’ve also expanded the discussion of the exemption for industry advancement programs.
 - VI.J—*Special Issues: Plans Providing Medical Benefits (aka Group Health Plans).* We’ve expanded the discussion of typical plans that provide medical care to include a discussion of medical expense reimbursement plans and disease-specific policies. We have also revised the discussion of typical plans that do not provide

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- medical care, including a caution regarding programs that are offered as part of a disease-management program.
- VI.K—*Other Special Issues for Particular Types of Plans or Benefits*. We have updated the discussion of special issues for severance plans to add a new discussion of the interaction of severance plans and the Code § 409A deferred compensation rules, including designing plans to comply with the requirements as well as designing plans to avoid Code § 409A by fitting into an exception. We’ve also added a discussion of bonus plans and emergency relief funds.
 - VI.L—*Table: ERISA Status of Common Fringe Benefits*. The table summarizing whether common benefits are subject to ERISA has been updated. It now includes a snapshot of a number of new benefits including, for example, mini-med coverage.
 - **Section XIX—MEWAs—Multiple Employer Welfare Arrangements.**
 - XIX.K—*MEWAs and Health Care Reform*. We’ve added a new subsection to discuss new health care reform rules that impact MEWAs, including rules prohibiting false statements about a MEWA’s financial condition. We’ve also added a new discussion of the DOL’s authority to issue administrative orders impacting MEWA operations and the requirement that MEWAs register with the DOL before commencing operations.
 - **Section XXII—Annual Form 5500 Reporting to the DOL.**
 - XXII.F—*Form 5500 Mechanics: Who, What, When, and How*. We have revised the discussion of the Form 5500 filing extension with information about the due date of corporate returns.
 - **Section XXIV—Summary Plan Descriptions & Summaries of Material Modifications.**
 - XXIV.L—*Conflicts Between SPD/SMM and Plan Document or Insurance Contract*. We’ve updated this discussion with a caution about a recent Supreme Court ruling on remedies to enforce the terms of ERISA plans.
 - XXIV.O—*Four-Page Summary of Benefits and Coverage Under Health Care Reform*. We have updated this discussion regarding recent work by the NAIC on definitions and standards for the four-page summary requirement.
 - **Section XXXII—Mistakes Happen: Correcting ERISA Compliance Problems.**
 - XXXII.B—*Correcting Late and Unfiled Form 5500s: Delinquent Filer Voluntary Compliance Program*. We have updated this discussion for new information on how to submit applicable penalty payments to the DVCP Program.
 - **Section XXXIV—Claims Procedures for Group Health Plans.**
 - XXXIV.B—*Requirements Added by Health Care Reform*. We’ve expanded this discussion to include a table that lists the additional standards for claims and appeals added by health care reform. We have also updated the discussion for the modified and extended enforcement grace period for certain claims and appeals requirements, including an update of the table summarizing the grace period for various requirements.
 - XXXIV.C—*Requirements Added by Health Care Reform*. We have updated the discussion of deemed exhaustion for the enforcement grace period for plans and insurers that do not strictly comply with internal claims and appeals procedures.
 - XXXIV.E—*Paperwork for Group Health Claims Procedures*. The discussion of the additional content requirements under health care reform has been updated for the extended enforcement grace period. The discussion of providing notice in a culturally and linguistically appropriate manner has also been revised and updated for the enforcement grace period.
 - XXXIV.M—*External Review Requirements*. We’ve added a discussion of special considerations for “smaller value” plans (such as some HRAs) and more information on independent review organizations.
 - XXXIV.N—*How to Protect Claim Denials From Being Reversed in Court*. We’ve updated this discussion for the extended enforcement grace period.
 - **Appendix Tab 10.**
 - *Sample TPA Services Agreement*. We have revised and updated the sample third-party administrator services agreement regarding various HIPAA requirements, including those for business associates.
 - **Other Appendix Tabs.** Other changes have also been made to the Appendix Tabs. Those are highlighted in the second table below.

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Instructions for Updating Your Manual. Before starting your filing, please look at the title page of your manual. It should say “1st Qtr. 2011” in the lower right-hand corner. If it doesn’t, the 1st Qtr. 2011 update package was probably not filed. Locate your 1st Qtr. 2011 update package and file it into the manual before you start filing this update.

Once you have determined that the 1st Qtr. 2011 update is in your manual, begin filing the 2nd Qtr. 2011 update, following the instructions in the table below. **Do not** remove the entire contents of the manual! Remove only the pages specified in the following tables.

Table of New/Revised pages for the Outline and Current Developments:

Take Out & Toss	Insert These Pages	Take Out & Toss	Insert These Pages
Current Developments Tab: [nothing to toss]	2nd Qtr. 2011 <i>Current Developments</i> , pages 1-10	Outline: pages 689-690B	pages 689-690B
Title Page , dated 1st Qtr. 2011	Title Page, dated 2nd Qtr. 2011	Outline: pages 875-876	pages 875-876
Intro Pages/ Table of Contents: pages i-xii	pages i-xii	Outline: pages 925-932	pages 925-932B
Outline: pages 91-144	pages 91-140	Outline: pages 945-946	pages 945-946
Outline: pages 511-512	pages 511-512	Outline: pages 951-954	pages 951-954
Outline: pages 529-530	pages 529-530	Outline: pages 957-968	pages 957-968B
Outline: pages 571-572	pages 571-572	Outline: pages 981-984	pages 981-984
Outline: pages 679-680	pages 679-680	Outline: pages 999-1000L	pages 999-1000P
		Index & Glossary Tab: pages 1-10	New Index & Glossary pages 1-10

Table of New/Revised pages for the Appendix:

Take Out & Toss	Insert These Pages
Tab 4: pages 1-2	pages 1-2 [Updated TOC]
Tab 10: pages 1-2	pages 1-2 [Updated TOC]
Tab 10: pages 233-244	pages 233-244 [Updated sample TPA Services Agreement]

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Lots More to Come! From the feedback we’ve received, we know that our manuals are the premier group health plans resources in the country. But here at EBIA we’re not satisfied. We are constantly striving to make the manual even better. In upcoming editions, look forward to complete coverage of all legal developments affecting ERISA compliance, and to our further analysis of existing law, with more examples and Q/As, etc.

EBIA Weekly. Keep up with new legal developments as they occur: sign up now for the EBIA Weekly, a free email newsletter, at www.ebia.com.

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