Of Compliance and Liability: 8 Things Every Plan Sponsor Should Know About ERISA

The Employee Retirement Income Security Act, or ERISA, was signed into law by President Ford back in 1974. While it is well-established law, there is still a lot of confusion associated with it, and many businesses run into hardships due to failing to comply with its requirements. To make things even more difficult, ERISA has been modified more than 40 times over the years, making it difficult for many employers to stay up-to-date with their ERISA legal compliance duties without ongoing ERISA counsel.

To put it simply, ERISA is the set of laws that establishes the minimum required standards for pension plans and health and welfare benefits in private industries. When there is a dispute over how a business must comply with these laws, the Department of Labor, the Department of Treasury (including the IRS), the Pension Benefit Guaranty Corporation, and the Department of Health and Human Services are the agencies responsible for practical interpretation and enforcement.

Of course, from a business's point of view, it is far better to avoid any potential issues escalating to those aforementioned agencies if possible. With this in mind, consider the following things that every plan sponsor should be aware of when it comes to ERISA.

Employers are the Plan Sponsors

One initial point of confusion in many cases is the term "plan sponsor." This is merely the industry standard and legal term used to describe the employer. So if your business offers benefits that need to comply with ERISA standards, for all intents and purposes, *your business is the plan sponsor.*

Non-Pension Benefits are Included

While ERISA was mostly intended to help regulate pension plans in the private industry, this set of laws also has many benefits and requirements related to non-pension benefit plans. These are typically referred to as "employee welfare benefit plans." These plans are established and/or maintained by the employer, and are used for the purpose of providing specific benefits to employees who are covered under the plans. If your business offers any type of benefit plan, they will likely need to comply with ERISA.

Employers are Responsible for Plan Compliance

All plan sponsors are directly responsible for compliance with current ERISA laws. This means that any new plans must be drafted and implemented to ensure compliance, and as any changes are made to the laws, businesses *must* adjust to comply with those changes. Specifically, your plan must:

- Have documents in place that are written to comply with the requirements of the Internal Revenue Code.

- Be administered in such a way as to always comply with the latest version of the ERISA law.

- Be reviewed by ERISA counsel at least annually to avoid unintentionally falling out of compliance with all applicable laws.

Consequences of Failure to Comply with ERISA

If a company fails to comply with ERISA regulations, the consequences can be quite serious. These consequences apply whether the violations were intentional or just simple oversights on the part of the employer. This is why it is so important for businesses to have their benefits plans created and managed by experienced benefits attorneys.

In most situations, the penalties consist of financial fines against the company. The fines and time consuming corrections can be significant depending on the nature of the violations. In serious cases, the charges can escalate and become criminal in nature, resulting in the arrest of

those responsible for the plan and preventing them from holding certain positions in the future, to name a few.

Fiduciary Responsibilities of Plan Sponsors

Businesses often perceive retirement plans and benefits as a perk of working for them, rather than something that plan participants (aka employees) are strictly entitled to. This, however, is not how these plans should be perceived, legally speaking. Under ERISA, plan sponsors have a fiduciary responsibility to act solely in the best interest of plan participants when it comes to these plans.

Once a qualifying plan has been implemented, the plan sponsor must always act in accordance with this responsibility. This can sometimes be difficult for business owners due to the apparent conflict of interest between putting the business first or putting the plan first. To avoid this conflict, companies engage ERISA legal counsel to provide ongoing fiduciary legal compliance counsel and help companies avoid costly legal compliance errors (Click here for more information on Hall Benefit Law's ongoing fiduciary legal compliance review). This serves to reduce or remove any conflicts and ensure that all plans are run in accordance with the fiduciary responsibilities of the plan sponsors.

Benefits of Self-Correcting

Businesses often discover that they are not in compliance with ERISA laws by performing a self-audit or by engaging proactive ERISA counsel who discover an issue during a plan review. When this happens, it is

possible to self-correct without significant involvement of government agencies. This can dramatically reduce (or even eliminate) any type of fines or penalties that will be incurred. Depending on the nature of the violations, it is often necessary to report the issue to the Department of Labor (or other agencies) with a plan on how the violations will be corrected.

The primary goal of the agencies responsible for enforcing ERISA is to ensure employees are receiving the benefits that they are entitled to, and they are typically open to working with companies who share that goal. It is strongly advised that businesses engage ERISA counsel to ensure correction filings are accurately completed and all relevant ERISA legal compliance issues are addressed.

Submitting a Summary Plan Description

Pursuant to ERISA, upon implementation of a benefit program, the plan sponsor must have a Summary Plan Description (SPD) for each ERISA plan. This must be provided within 90 days to newly-covered participants, or 120 days for all new plans. This plan must also be updated at least once every 5 or 10 years, depending on the type of benefits included.

The plan must be furnished in a way that is “reasonably calculated to ensure actual receipt of the material,” which often means sending it via standard mail, giving it in person, or sending it via email. The SPD must be written so that it is accurate and comprehensive, and understandable to the average participant in the plan. If anything in the plan is found to be missing or misleading, it can result in violations under ERISA.

Getting the Help You Need

In the vast majority of cases, plan sponsors need experienced ERISA professionals implementing and managing their benefit plans. Employers who try to self-manage often find that they are spending far more time than is reasonable on this work, which is why working with experienced ERISA legal counsel is advisable. Call Hall Benefits Law at 404-731-6623 or contact us today!