

ERISA Compliance and Reporting Requirements: What Employers Need To Know and Address in 2024



ERISA, which stands for the Employee Retirement Income Security Act, is a federal law regulating employer-sponsored group benefits. Nearly every employer, regardless of their size, is subject to ERISA if they offer even one employer-provided group benefit such as health, dental, vision, accidental death & dismemberment, disability, or group term life insurance, a medical flexible spending account or health reimbursement account, a wellness and employee assistance program, or any other benefit for which the employer contributes to the cost. The only exempt employers are churches and government entities.

Besides stipulating certain plan features, the law also mandates **detailed reporting requirements**, both to the Department of Labor and other government agencies and to employees and covered members under your policies. While ERISA was first enacted in 1974, subsequent modifications under the Patient Protection and Affordable Care Act (PPACA) have added additional requirements and changed reporting deadlines. If you offer any of the above-mentioned health and welfare benefits, you must meet specific requirements, specifications, and deadlines for plan documents under ERISA as well as under the PPACA.

The Department of Labor's Employee Benefits Services Administration (EBSA) routinely conducts audits of group health benefit plans to investigate or audit the plan's compliance. In addition, the Health Benefits Security Project (HBSP) established under the PPACA, adds to the EBSA's compliance and enforcement initiatives. According to HR Service, Inc., *"audits are anticipated to increase significantly, given increased audit budgets and concerns over ERISA and PPACA violations."*

If your company is selected for a DOL audit, a letter will be sent to the Plan Sponsor containing the list of documents the DOL would like to review. The request for information typically goes back **three to six years**.

While every audit is unique, reported trends show the following areas of concern in recent audits:

- Summary Plan Descriptions (SPD's)
- HIPAA compliance, particularly notices to employees about enrollment rights
- **Inadvertently excluding - or including - people who may or may not be eligible to participate in the plan, including dependents up to age 26**
- PPACA Grandfathered Plan notices and documentation of coverage for adult children

The DOL reports that common audit triggers include:

- the Department's internal audit initiatives
- employee complaints
- the Department's Memorandum of Understanding with the IRS
- **form 5500 filings inconsistencies or suspect information**
- an audit of a plan's auditor (if 100+ group)
- press tips and public visibility of a company or its third-party vendors
- randomly selected

Moving into calendar year 2024, DOL audits will also likely focus on:

- employer communications and documentation
- employer reporting requirements
- structure of group health benefit plans and offers of coverage
- adherence to PPACA requirements
- coverage and **eligibility verification** of essential health benefits, cost-sharing, and out-of-pocket limits for applicable plans

If you as an employer, offer any group benefit(s), you must meet clearly defined requirements, specifications, and deadlines for plan documents under ERISA as well as under the PPACA.



Critical ERISA and PPACA provisions that require strict compliance include:

- the distribution of a written plan document and Summary Plan Description (SPD) for every health and welfare benefit and any voluntary benefit pre-taxed under a section 125 plan to all plan participants including spouses and COBRA enrollees
- the distribution of ERISA benefit notices to all eligible employees on enrollment and re-enrollment of your health plan
- meet all fiduciary standards and plan terms
- the establishment of a record keeping system to: track contributions, track benefit payments, house participant and beneficiary information, **validate all plan enrollees and their dependents**, and to prepare reporting documents

If an employer is found to have been non-compliant and/or non-responsive to instituting the proper benefit plan control and safeguards relative to ERISA, they can also be subject to financial penalties under section 502(i) of ERISA.

REMEMBER

The employer is solely responsible for ERISA compliance. Penalties can be enforced for failure to comply with ERISA regulations - including DOL enforcement actions and penalties - as well as employee lawsuits. Infractions can entail up to a \$100/day penalty for **every employee that is affected by a violation** until the violation is corrected.

There are first and second levels of penalties involved.

- The first level penalty under section 502(i) is five percent of the amount involved. (so, if it was determined that the plan covered ineligible dependents constituting \$500,000 in benefit expense, the employer could be penalized \$25,000.)
- The second level penalty under section 502(i) is significantly more severe; **100 percent of the amount involved**, which may be assessed in addition to the first level penalty if the prohibited transaction is not corrected within 90 days after a final agency order is issued with respect to such transaction.

Employees can also sue employers for ERISA violations under section 502(a).

Frye v. Metropolitan Life Ins. Co., 2018 WL 1569485 (E.D. Ark. 2018)

A court has held that an employee is entitled to the proceeds of dependent life and accidental death and dismemberment (AD&D) insurance policies after her son died in a car crash, even though the son was over the age limit for dependent eligibility at the time of his death. The employee provided the son's birthdate and other information when she enrolled him in her employer's medical plan in late 2012. She also elected dependent life and AD&D coverage at that time, but she was not required to provide any information about her son for that coverage. The son's coverage began in 2013 and automatically renewed in 2014 and 2015. Although the son lost eligibility for the dependent life and AD&D coverage when he turned 23 in 2014, the employee did not notify her employer or the insurer. **Neither the employer nor the insurer notified the employee that her son was no longer eligible for the coverage**, and they continued to collect premiums from the employee's wages. After the son's death in 2015, the insurer denied the employee's claim for benefits due to his age and refunded the premiums.

The employee sued under ERISA, citing § 502(a) without specifying the grounds on which she sought recovery. The court ruled that the insurer had correctly denied benefits under ERISA § 502(a)(1)(B), since the insurance policy unambiguously terminated dependent eligibility at age 23. On its own initiative, the court then considered whether the employee was entitled to appropriate equitable relief under ERISA § 502(a)(3). The court decided that the benefits committee (acting as plan administrator) and the insurer had breached their fiduciary duties by using flawed administrative procedures that failed to confirm eligibility at enrollment, thereby allowing employees to enroll dependents who either were ineligible or became ineligible. While conceding that not screening for eligibility upfront might simplify administration and reduce costs, the court viewed the procedure as focusing too much on saving expenses while overlooking how simple screening for age would be. For example, the employer could have provided the life insurer with birthdates collected during medical plan enrollment.

The court concluded that even though the plan documents required employees to notify the insurer of changes in dependents' status, the employee's failure to notify did not relieve the administrator and insurer of their fiduciary duties—especially given the length of the plan documents. The court held that the appropriate remedy was a surcharge against the employer and insurer equal to the amount the employee would have received if coverage had been in force when her son died.

As a result, in electing to address **fiduciary duties**, the court clearly was troubled by an administrative procedure that gave the insurer windfall profits from employees who paid premiums for ineligible dependents and never filed claims. Employers should note that the court placed some of the blame with the plan sponsor, **and that judgment will be entered against both the employer and the insurer**. This ruling will likely influence and/or establish precedent, involving similar claims brought forth against employers involving **ineligible dependents** who were covered as part of a health and welfare plan.

Summary Findings:

- ERISA requirements **mandate** a fiduciary responsibility to manage your health plan responsibly
- DOL audits will increase “significantly” in 2024
- Financial penalties - some severe - can be imposed for failure to comply with ERISA regulations
- Courts have found **employers to share in liability, and required to participate in financial restitution to employees**, for failure to properly adhere to their fiduciary responsibilities

How can Verifi1 help?

Conducting a **comprehensive eligibility verification initiative** demonstrates that the plan is in full compliance with federal law by ensuring that only eligible participants are on the plan and that the plan is administered in accordance with its corresponding documents. Remember, by allowing exceptions, even unintentionally through failure to monitor, you essentially amend eligibility for other participants, thus making it difficult or impossible to protect your plan in the future.

Verifi1 can assist your company with ERISA verification requirements by fully managing and supporting the following processes so that your staff members can focus on their core responsibilities.

Initial Dependent Eligibility Verifications

Initial (“comprehensive”) verifications identify **ineligible dependents** currently covered under an employers medical insurance plan, typically encompassing the entire enrolled population (excluding single contract holders)

Ongoing Dependent Eligibility Verifications

Ongoing verification validates the eligibility of **new dependents** and spousal relationships, as well as capturing changes that occur during or outside of open enrollment activities.

Employee Legal Status Reviews

Legal status reviews validate I-9 information, as well as (if applicable based on employer SIC code classifications) collecting documents to validate employee compliance regulations in accordance with International Traffic in Arms Regulations (“ITAR”) and the Export Administration Regulations (“EAR”) of the U.S. Department of Commerce.

For further information on how Verifi1 can assist you with Eligibility Verification contact us at info@Verifi1.com