



YOUR PLAN HAS BEEN SELECTED FOR A DOL AUDIT . . . NOW WHAT?

If you sponsor an employee benefit plan in the Kansas City area, it is inevitable that one day you will receive a letter from the United States Department of Labor, Employee Benefit Security Administration (EBSA) informing you that your employee benefit plan has been selected for an audit. Before you start worrying and losing sleep, there are a couple of steps that you can take to ensure that the audit is painless, and perhaps, even insightful and informative.

The Department of Labor, Employee Benefit Security Administration ("EBSA") is responsible for investigating all employee benefit plans covered by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Although EBSA does not have the resources to investigate all employer sponsored employee benefit plans, there is an increased likelihood of an employee benefit plan in the Kansas City area being audited because the regional office that covers eleven Midwestern states is located here in Kansas City, Missouri.

Employee benefit plans are typically selected for an audit either because an employee made a complaint to EBSA and the agency is investigating the complaint or your employee benefit plan was selected at random from its Department of Labor required 5500 filings. However, do not expect the auditor to tell you the reason for his or her audit.

A positive attitude is essential when you are being audited by a government entity. Although it may not be easy to maintain a positive attitude, it helps if you keep in mind that nothing concerning the audit is personal or performed for the purpose of punishing you. Rather, this audit is conducted to ensure that you and the administrator of your plan are looking out for the best interest of employees. Remember, it is more likely for the auditor to maintain an employer friendly attitude if you have a positive attitude regarding the audit.

Even though a positive attitude is important, you must also be prepared for the audit. Carefully read the letter provided to you by EBSA informing you of the audit. Typically, the letter will tell you (1) which employee benefit plan is to be audited; (2) whether the audit is going to take place on-site or if you are to mail the documents to the EBSA auditor; and (3) which documents the auditor needs copies of for his or her own files and which documents should be readily available for review.

If the audit will be conducted on-site, it is your responsibility to provide a comfortable work space for the auditor. Typically, an audit will last a couple of days; however, in-depth audits may last much longer. All copied documents requested by the auditor should be prepared prior to the scheduled audit. The organization and preparation of the documents provided to the auditor will be an indication of how you administer your employee benefit plans.

In addition to requesting documents, the auditor will generally request an interview with the fiduciary of the plan. The fiduciary of the plan is typically the person responsible for the daily administration of the plan or the person who makes decisions concerning the plan. The fiduciary being interviewed should know the plan and be able to answer the auditors questions (nothing is worse than plan fiduciary that is unable to answer the auditor's questions). Like unorganized documents, an unknowledgeable fiduciary is an indicator of a poorly managed plan. The fiduciary being interviewed should also answer the auditor's questions honestly. If the fiduciary lies during the interview, chances are that the fiduciary will later be caught in the lie.

The auditor will typically request an exit interview prior to leaving the worksite. In the exit interview, the auditor will inform you whether or not any violation was found during the audit. If a violation was found, the auditor will request a correction. Once the auditor receives sufficient evidence that the violation has been corrected, typically the auditor will send you a letter explaining the violation and the corrective action taken. The letter may also explain that since corrective action was completed, the EBSA auditor will close the file. If no violation was found by the auditor, the auditor will send you a letter indicating that the file is being closed.

We recommend hiring legal counsel familiar with ERISA and DOL audits to represent you in the audit. Hiring legal counsel familiar with these procedures can help you prepare and, contrary to many clients preconceived notions, actually expedite the audit process.

Although an audit is never pleasant, having a positive attitude, being prepared and being honest will ensure that the audit goes as smoothly as possible and may even be beneficial for your employee sponsored benefit plan.

For more information, please contact Haynes Benefits at 816.875.1919 or visit
www.haynesbenefits.com