

# Employer Considerations for Mid-Year Plan Amendments and Election Changes



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# Mid-Year Amendments to ERISA Plans

- ▶ **ERISA Plan Documents**
  - ▶ **Should reserve right to amend or terminate**
  - ▶ **Effectuate changes similar to other important business matters**
    - ▶ **Resolutions, board meetings, etc.**
  - ▶ **Amendments should be in writing**
- ▶ **Summary Plan Descriptions**
  - ▶ **Summary of Material Modification – 210 days after the end of the plan year in which the change becomes effective**

# Mid-Year Amendments to ERISA **GHPs**

- ▶ **Summary of Benefits & Coverage**
  - ▶ **Notice of Material Modifications – 60 days prior to the date on which the modification will become effective**
  - ▶ **Any material in any of the terms of the plan or coverage that would affect the content of the SBC, that is not reflected in the most recently provided SBC**
  - ▶ **Not required if change occurs in connection with a renewal or reissuance of coverage**
- ▶ **Caution: HIPAA Nondiscrimination Safe Harbor for amendments in connection with renewal/new plan year**

# Amendments to ERISA Documents

- ▶ **Effective Date**
  - ▶ **“Retroactive” – effective in a prior plan year**
  - ▶ **Back to first day of current plan year**
  - ▶ **As of a set date within the plan year**
  - ▶ **Next plan year**
- ▶ **Short Plan Year**
  - ▶ **File Form 5500 for Short Plan Year**
  - ▶ **Reflect change, reasoning**

# Fiduciary Best Practices

- ▶ **Establish Governance Structure**
  - ▶ Identify positions and responsibilities
  - ▶ Designate authority
  - ▶ Plan committee?
- ▶ Understand delegation of responsibility under committee charters and plan documents.
- ▶ Be willing to dedicate the time and effort required.
- ▶ Read meeting materials in advance and prepare questions.

# Review Plan Documents & Materials

- ▶ ***Official* Plan Governance Documents:**
  - ▶ Plan Document
  - ▶ Trust agreement
  - ▶ Investment Policy Statement
- ▶ Other administrative policies (e.g., cybersecurity policy)
- ▶ Summary Plan Description (SPD)
- ▶ Fiduciary committee by-laws or charters
- ▶ Minutes from fiduciary committee meetings
- ▶ Forms 5500 Annual Reports
- ▶ Service provider agreements
- ▶ Employee Handbooks

# Mid-Year Election Changes

- ▶ Code Section 125 Cafeteria Plans allow employees to pay premiums and contributions on a pre-tax basis
- ▶ **Cafeteria Plan Document**
- ▶ Elections must generally be made before the beginning of coverage period
  - ▶ New hires may be allowed to make initial elections within 30 days retroactive to date of hire (all pre-tax amounts must still be taken from future pay)
- ▶ Elections Must be irrevocable during the coverage period, unless a change is based on a permitted election change event

# Mid-Year Election Changes

- ▶ Election change events for your plan must be provided for in 125 cafeteria plan document
- ▶ Coordinate with ERISA plan document and underlying plan materials (e.g., health plan document)
- ▶ Only certain reasons/events allow for a change
- ▶ Two Part Test: (1) specified event must have occurred and (2) the requested change must be consistent with that event
- ▶ Required election change events:
  - ▶ FMLA Leaves of Absence
  - ▶ *Special Enrollment Rights*

# Mid-Year Election Changes

- ▶ **Change in Status Election Change Events:**
  - ▶ **Change in employee's legal marital status**
  - ▶ **Change in number of dependents**
  - ▶ **Change in employment status**
  - ▶ **Dependent satisfies (or ceases to satisfy) dependent eligibility requirements**
  - ▶ **Change in residence**
  - ▶ **Commencement or termination of adoption proceedings**

# Mid-Year Election Changes

- ▶ **Change in (Coverage) Status Election Change Events:**
  - ▶ **Change in Coverage Under Other Employer Plan**
  - ▶ **Change in Coverage of Spouse or Dependent Under Another Employer Plan**
  - ▶ **Loss of Group Health Coverage Sponsored by Governmental or Educational Institution**

# Mid-Year Election Changes

- ▶ **Change to Benefits, Cost**
  - ▶ **Automatic Increases/Decreases in Elective Contributions to Reflect Cost Changes**
  - ▶ **Significant Cost Changes (increase or decrease)**
  - ▶ **Significant Coverage Curtailment (With or Without Loss of Coverage)**
  - ▶ **Addition or Significant Improvement of Benefit Package Option**

# Mid-Year Election Changes

- ▶ **HIPAA Special Enrollment Rights**
- ▶ **COBRA Qualifying Events**
- ▶ **Judgments, Decrees, or Orders**
- ▶ **Medicare or Medicaid Entitlement**
- ▶ **FMLA Leaves of Absence**
- ▶ **Pre-Tax HSA Contribution Changes**
- ▶ **ACA Election Change Events**
  - ▶ **Reduction of Hours**
  - ▶ **Exchange Enrollment**

# Transparency in Coverage: Machine Readable Files Public Disclosure Requirement

- ▶ **Upcoming Deadline: July 1, 2022**
- ▶ **Requires most group health plans to publicly disclose their plan's in-network provider rates and out-of-network provider allowed amounts and billed charges**
- ▶ **Applies to Fully-insured plans and Self-funded plans**
- ▶ **Does not apply to retiree-only plans, HRAs, health FSAs, excepted benefits, grandfathered health plans**

# Transparency in Coverage: Machine Readable Files Public Disclosure Requirement

- ▶ **Fully-insured plans:**
  - ▶ May enter into written agreement for carrier to post on carrier website
  - ▶ Carrier assumes liability
  - ▶ Employer need not post anything
- ▶ **Self-funded plans:**
  - ▶ May enter into written agreement for TPA/third party to post on third party website
  - ▶ Plan sponsor retains liability
  - ▶ Employer must still post link on its own publicly available website
    - ▶ May not be required if third party website identifies plan on its website, but most likely will not

# Transparency in Coverage: Machine Readable Files Public Disclosure Requirement

- ▶ **Best Practices:**
  - ▶ **Written agreement with insurance carrier**
  - ▶ **Written agreement with TPA, claims administrator**
  - ▶ **Indemnification provisions**
  - ▶ **Work with TRUE consultant to coordinate with carrier and/or third party**
  - ▶ **Include in service contracts**
  - ▶ **Where on your public website?**
    - ▶ **Employment/Application section?**
    - ▶ **Credit information (often at the bottom)**

