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Group Health Plan Disclosures: Requirements and Best Practices

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Preventive Strategies and
Positive Solutions for the Workplace

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This presentation provides general information regarding its subject and may not be construed as providing any legal advice. Persons needing or desiring legal advice should consult counsel concerning individual circumstances.

About the Firm

- » Represents management exclusively in every aspect of employment including benefits, labor, and immigration law and related litigation.
- » 800 attorneys in 57 locations nationwide.
- » Current caseload of over 6,500 litigations and approximately 650 class actions.
- » Founding member of L&E Global.

About Your Presenter

Monique Warren is a principal attorney in Jackson Lewis' Employee Benefits Group with over 15 years' experience advising employers on a variety of employee benefits law compliance matters. She represents employers in matters to the Internal Revenue Service and Department of Labor, prepares plan documents and employee communications, and assists plan fiduciaries and others with plan corrections and related issues. For the ten-year period before becoming an employee benefits attorney, Monique managed human resource functions in manufacturing and research organizations. When Monique is not advising employers, she enjoys doing just about anything outdoors – especially in a garden!

- **Disclosure requirements for group health plans and their sponsors and administrators**
- **Why – applicable laws and enforcement agencies**
- **Who's responsible - who's the “plan administrator”**
- **What disclosures and notices are required**
- **To Whom disclosure must be made**
- **How disclosure must be made**
- **When disclosure must be made**

Plan established or maintained by an employer to provide group health benefits

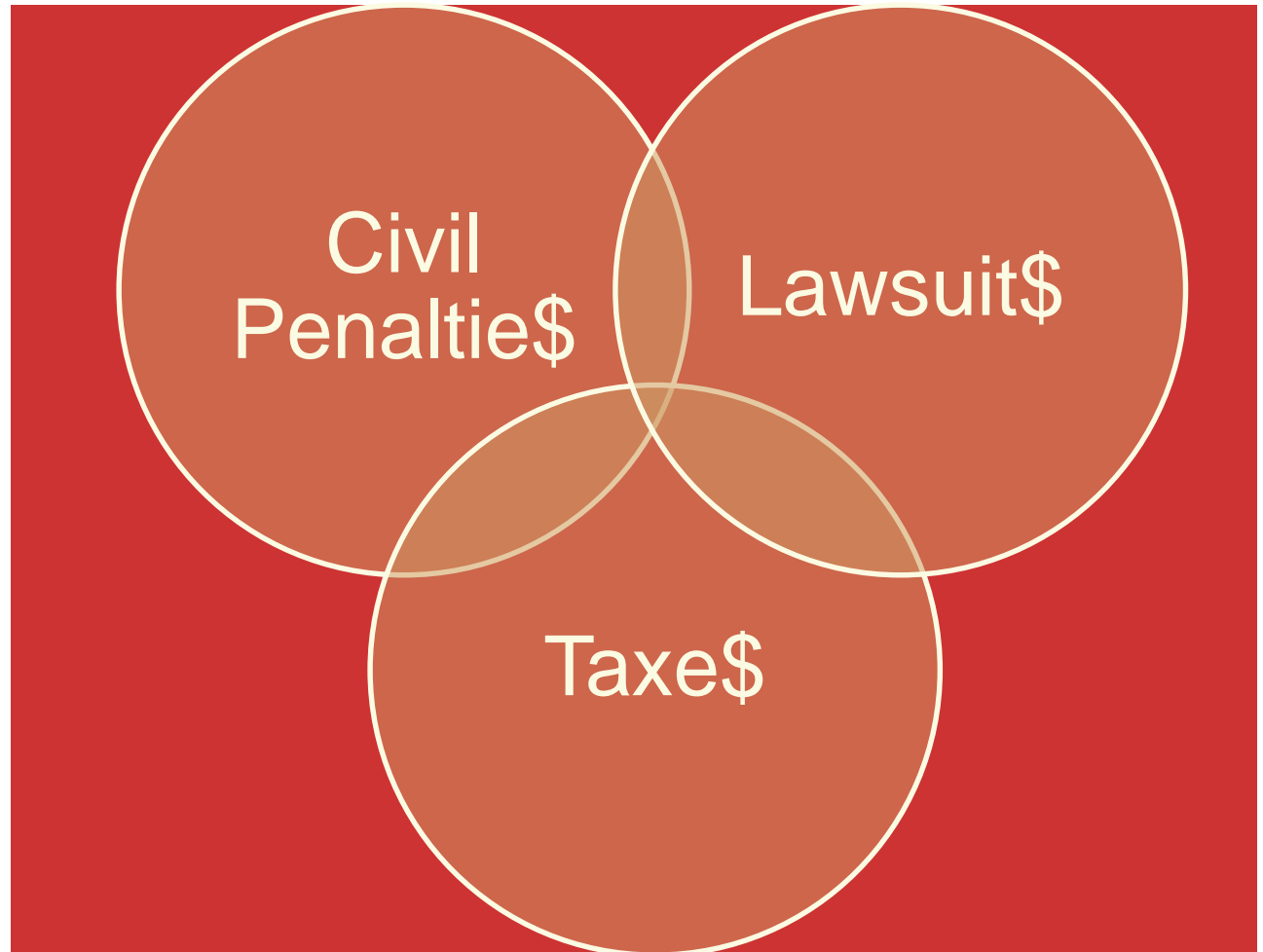
- Medical**
- Health flexible spending account**
- Dental**
- Vision**
- Rx**
- On-site clinics?**
- Employee assistance programs?**

Employee Retirement Income Security Act (ERISA)– enforced by US Department of Labor’s (DOL) Employee Benefit Security Administration (EBSA)

Internal Revenue Code (IRC) – enforced by Internal Revenue Service (IRS)

Public Health Service Act (PHSA) – enforced by US Department of Health and Human Services (HHS)





- **Plan Sponsor**
 - **Usually the Employer**
 - **Funds, Associations, Etc.**
- **Plan Administrator**
 - **Often the Employer**
 - **Should be a committee**
- **Other “Fiduciaries”**
- **You?**



- **Summary Plan Description**
 - **May be combined with plan document (Combo)**
 - **May be wrapped with other benefits**
- **Summary of Material Modification**
- **Summary of Benefits and Coverage**
- **Annual Report (IRS Form 5500)**
- **Summary Annual Report**
- **Insurance policies/certificates (if applicable)**
- **Enrollment Information**

- **Michelle's Law (if applicable – e.g., plan provides coverage for children over age 26 who are fulltime college students)**
- **Women's Health and Cancer Rights Act (WHCRA) Notice**
- **Designation of Primary Care Provider (if applicable, include in SPD)**
- **Consolidated Omnibus Budget Reconciliation Act (COBRA)**
- **Children's Health Insurance Program (CHIP)**

- **Name of plan (including any different name by which the plan is commonly known by participants)**
- **Name and address of employer**
- **Plan sponsor's federal tax identification number**
- **Plan number**
- **Description of type (i.e., group health plan)**
- **Description of how the plan is administered**
- **Name, address and phone number of plan administrator**
- **Name and address of the agent designated for service of process**
- **Name, title, and address of each trustee (if any)**

SPD Content (continued)

- If collectively bargained, name and address of the union, etc. and a statement that it is collectively-bargained**
- Circumstances that may result in loss of benefits**
- Description of the plan sponsor's authority to amend or terminate the plan and how**
- Benefits, rights, and obligations of participants and beneficiaries upon plan termination**
- Summary of any plan provision that may result in a fee or charge that must be paid before receiving benefits**
- Sources of contributions to the plan and method calculated**

- Schedule of benefits***
- Mothers' and newborns' special rights statement**
- Qualified medical child support order procedures***
- Cost-sharing provisions (deductibles, coinsurance, Rx co-pays, network, etc.)**
- Wellness program information**
- Coverage continuation rights and obligations**

- Effective date**
- Plan Adoption**
- Plan administrator's discretionary authority**
- Subrogation and recovery**
- Anti-assignment**
- Limitations period**
- Last day of plan's fiscal year**
- Funding source**
- Claims and appeals procedures**
- Statement of ERISA rights (model language)**

To Whom?

- **Eligible Employee, Participant or Beneficiary**
- **Covered Family Members**
- **Authorized Representative**
- **DOL**



Different rules for –

○ Eligibility

○ Participation timing

○ Benefits

○ Cost-sharing

○ Collective Bargaining Agreement

○ Operating Unit

○ etc

ERISA general rule

- Mail or in-person**

- Electronic**

 - Safe harbor**

 - Integral part of job**

 - Consent**

 - Non safe harbor**

- Limited circumstances when “posting” might be sufficient**

Special Rules for Non-English-Speaking Workers

- SPD & SMM – translate or interpret if plan covers fewer than 100 participants and 25% or more are literate only in the same non-English language or if the plan covers 100 or more participants and 500 or more or 10% are literate only in the same non-English language**
- SBC – translate if sent to address in county with 10% or more literate only in the same non-English language**

Initially

- ✓ **SPD – within 90 days of becoming covered**
- ✓ **Enrollment right and procedure**
- ✓ **COBRA rights – when coverage starts (can include model notice in SPD)**
- ✓ **WHCRA – at enrollment (can include model notice in SPD)**
- ✓ **Coverage Options (Marketplace) – when hired**



Annually

- ✓ **Summary Annual Report within 9 months after plan year end**
- ✓ **Children's Health Insurance Program**
- ✓ **Women's Health and Cancer Rights Act**
- ✓ **Grandfathered plan status (if applicable)**
- ✓ **Summary of Benefits and Coverage**
- ✓ **Primary Care Provider (if applicable)**
- ✓ **Wellness (annual enrollment)**
- ✓ **Medicare D (if applicable)**
- ✓ **Summary of Benefits and Coverage**

When Plan Is Modified

- ✓ **Summary Plan Description – every 5 years, but SMM within 210 days after plan year end**
- ✓ **Summary of Material Reduction in Covered Services or Benefits – within 60 days of adoption of change**
- ✓ **Revised Summary of Benefits and Coverage – 60 days before effective date**

On-demand within 30 days of written request

- ✓ **SPD**
- ✓ **Plan Document (if separate)**
- ✓ **Latest Form 5500**
- ✓ **Trust Agreement (if applicable)**
- ✓ **Collective Bargaining Agreement (if applicable)**
- ✓ **Other documents establishing or governing plan (including MHPAEA determination)**

When applicable

- ✓ **Medical Child Support Order Notice – promptly upon receipt**
- ✓ **National Medical Support Notice – promptly**
- ✓ **MHPAEA Cost Exemption**

Special rules for COBRA notices

- ✓ Election right – within 44 days after qualifying event (or 44 days after loss of coverage if that's when COBRA period begins)
- ✓ Unavailability – within 14 days
- ✓ Early Termination – as soon as practicable after determination made

COBRA!



DOL Self-Audit:

<http://www.dol.gov/ebsa/healthlawschecksheets.html>

DOL Disclosure Guide:

<http://www.dol.gov/ebsa/pdf/rdguide.pdf>

- » This program, has been approved for 1.5 (General) recertification credit hours toward PHR, SPHR and GPHR recertification through the HR Certification Institute.
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QUESTIONS



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UBAwebinars@jacksonlewis.com

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