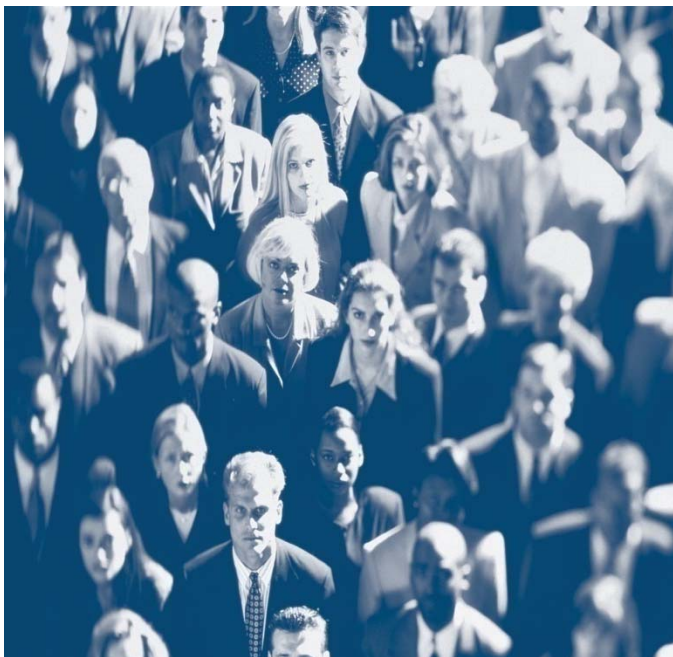


**This UBA Employer Webinar Series
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March 8, 2016

Plan Documents 101: 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.

- » **Represents management exclusively in every aspect of employment including benefits, labor, and immigration law and related litigation.**
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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!

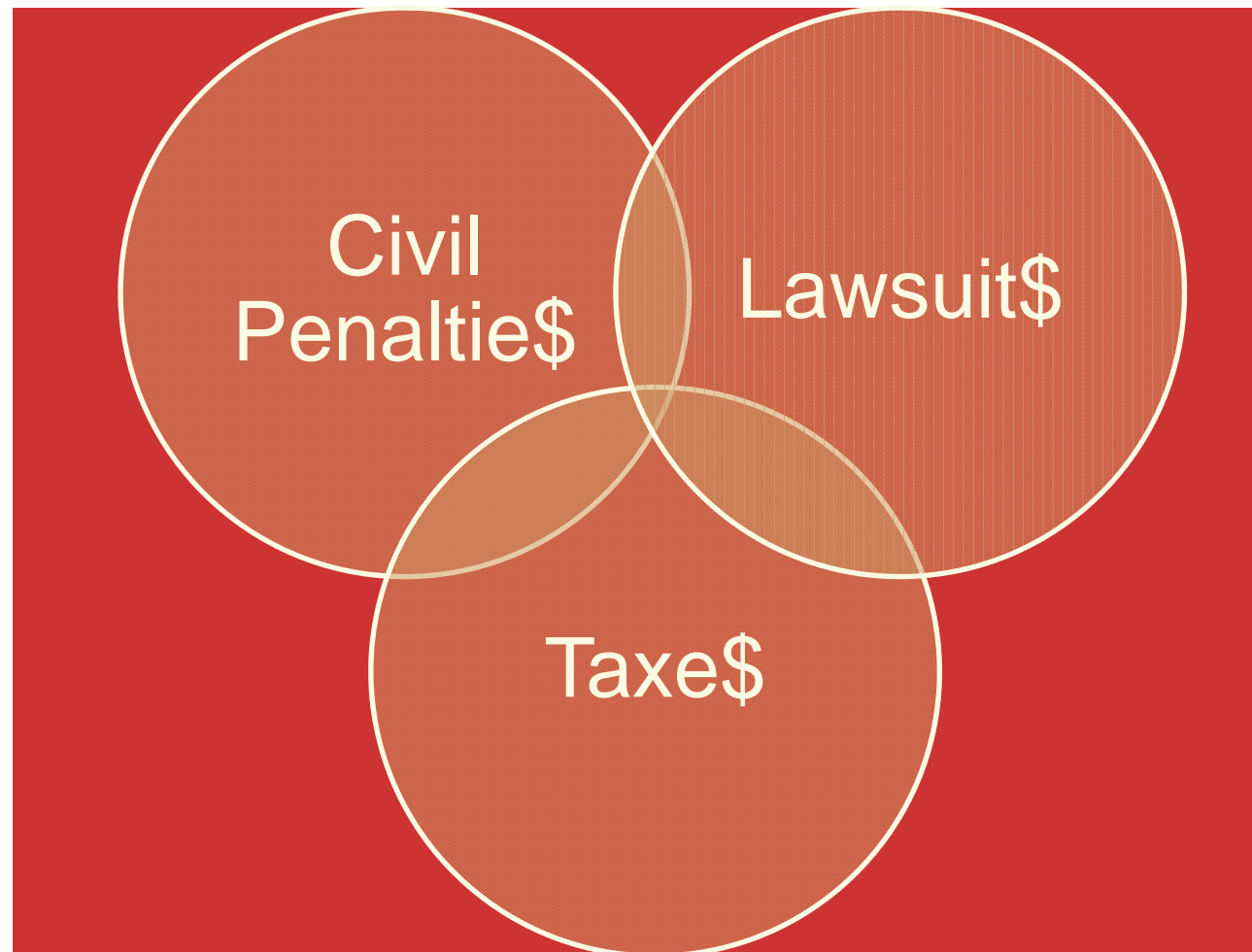
- **Why You Should Care About Plan Documents**
 - **Statutory requirements**
 - **Internal Revenue Code**
 - **ERISA**
 - **State Insurance Law**
 - **Litigation mitigation**
- **Considerations for Different Types of Plans**
 - **Group Health & Welfare Plans**
 - **Wrap approach**
 - **Cafeteria/Flex Plans**
 - **Retirement Plans**
- **Amending & Updating**
- **Document Retention**
- **To Do List**
- **Questions**

It's 9am Monday and a DOL agent asks for:

- » Your organization's group health plan "plan document" including any amendments.
- » The Summary Plan Description for that group health plan.
- » The group health plan's Summary of Benefits and Coverage (SBC), Notices of Material Modifications, and Glossary.
- » All contracts with insurance companies for the provision of health benefits or, if self-insured, all contracts for claims processing, administrative services, and reinsurance.
- » Documents which describe the responsibilities of both the employer and employees with respect to the payment of the costs associated with the purchase and maintenance of health and welfare benefits.
- » A copy of the plan's rules for eligibility to enroll under the terms of the plan (including continued eligibility). a copy of the written procedures that provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent.
- » A copy of the plan's rules regarding coverage of medical/surgical and mental health benefits.
- » The plan's Newborns' Act notice (this should appear in the plan's SPD).
- » A copy of the plan's rules regarding pre-authorization for a hospital length of stay in connection with childbirth.
- » A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries upon enrollment and annually.
- » Materials describing any wellness programs or disease management programs offered by the plan. If the program offers a reward based on an individual's ability to meet a standard related to a health factor.
- » If the Plan is claiming or has claimed grandfathered health plan status , a copy of the grandfathered health plan status disclosure statement that was required to be included in plan materials provided to participants and beneficiaries describing the benefits provided under the plan and records documenting the terms of the plan in effect on March 23, 2010 and any other documents necessary to verify, explain or clarify status as a grandfathered health plan.
- » If the plan is **not** claiming grandfathered health plan status under section 1251 of the Affordable Care Act, a copy of the choice of provider notice informing participants of the right to designate any participating primary care provider, physician specializing in pediatrics in the case of a child, or health care professional specializing in obstetric or gynecology in the case of women, and a list of participants who received the disclosure notice and copies of documents relating to the provision of preventive services for each plan year on or after September 23, 2010 and a copy of the plan's Internal Claim and Appeals and External Review Processes and copies of a notice of adverse benefit determination, notice of final internal adverse determination notice, notice of final external review decision, and any contract or agreement with any independent review organization or third party administrator providing external review.

If it was an IRS agent, he or she would ask for:

- » The plan document, trust document and all amendments that relate to the year(s) under examination.
- » The most recent IRS determination letter (or opinion letter, if using a volume submitter plan).
- » Forms 5500 for the plan and any other tax-qualified plans sponsored by the company.
- » Forms 5300 , 940, 941, W-2, 1099-Rand 990-T, if applicable.
- » The Plan's summary plan description, summaries of material modification, and summary annual report
- » If a safe harbor plan, a copy of the safe harbor notice.
- » Demonstration that the plan met the eligibility and coverage requirements of Internal Revenue Code section 410.
- » Company records used to determine employees' eligibility to participate in the plan for the years under examination such as payroll records, time cards, personnel records (showing dates of hire and termination, hours worked, etc.), and employment contracts.
- » A list of plan participants as well as a list of employees not participating and why.
- » Identification of controlled group members and other related entities.
- » Allocation schedules showing participants' compensation, contributions, forfeitures, and income.
- » A list of highly compensated employees.
- » A complete copy of the average deferral percentage and actual contribution percentage tests, if applicable.
- » Evidence of a fidelity bond for all people handling trust assets (as required by ERISA).
- » Supporting documentation for all plan assets and liabilities.
- » Trustee or plan administrator reports and meeting minutes.



- **Internal Revenue Code (sections 105, 106, 125, 127, 129, 137, 401, etc.)**
- **ERISA (section 402)**
 - **Named fiduciary**
 - **Funding method**
 - **Administration**
 - **Amendment procedure**
 - **Basis for payments**
- **State Insurance Law**
 - **Imposed on insurer and non-ERISA plan, not on ERISA-covered employee benefit plan**



Plan established or maintained by an employer to provide

- Health & Welfare (medical, dental, life, disability)**
- or**
- Retirement Benefits**
- Severance ??**

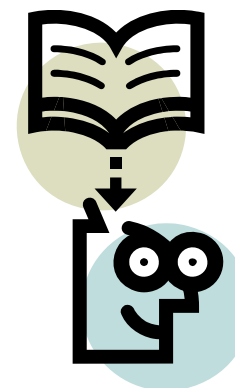
Cafeteria plan is NOT an ERISA-covered plan

Employee Retirement Income Security Act

- **Plan Document**
 - **May wrap together different kinds of health and welfare benefits**
- **Summary Plan Description**
 - **May be combined with plan document (Combo)**
- **Summary of Material Modification**
- **Summary of Benefits and Coverage (group health only)**
- **Annual Report (IRS Form 5500 filed electronically with DOL and provided to participant if requested)**
- **Summary Annual Report**
- **Insurance policies/certificates (if applicable)**
- **Election/enrollment “forms”**

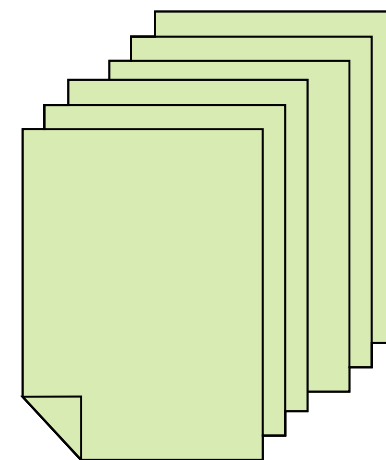
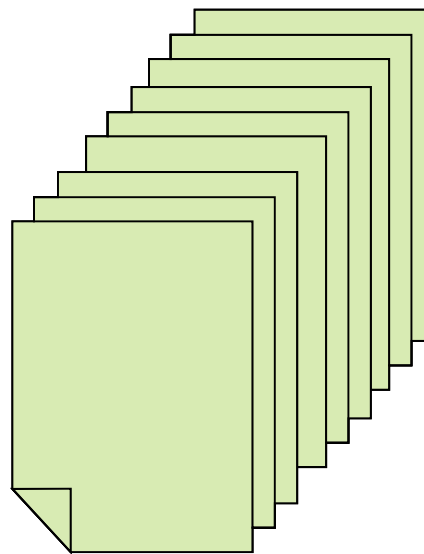
- Content requirements – some differences for group health plans (compared to retirement plans)
- Distribution method – mail, hand-deliver, electronic (if participant consents or electronic system used as integral part of job)
- Distribution timing – 90-day rule

In ER's best interest that EE reads and understands SPD!!



- 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 of pension or welfare benefit 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)**

- Last day of plan's fiscal year**
- Funding source**
- Claims and appeals procedures**
- Statement of ERISA rights (model language)**



- 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**

If same document serves as both plan and SPD, add:

- Effective date**
- Plan Adoption**
- Plan administrator's discretionary authority**
- Subrogation and recovery**
- Anti-assignment**
- Limitations period**

- **Plan Document**
 - **Internal Revenue Code and regulations dictate specific plan content that's usually incomprehensible to the average participant**
- **Trust Document**
- **Summary Plan Description**
 - **May not be combined with plan document**
- **Investment Related Disclosures (if applicable)**
- **Summary of Material Modification**
- **Annual Report (IRS Form 5500 filed electronically with DOL and provided to participant if requested)**
- **Summary Annual Report**
- **Election/enrollment "forms"**

Additional SPD Content for Retirement Plan

- Requirements for eligibility and benefits including the plan's normal retirement age, vesting requirements, and other conditions a participant must meet to receive benefits**
- Qualified domestic relations procedures***
- If applicable, a description of the joint and survivor benefits including requirements for a spouse to waive it**
- Statement regarding whether benefits are insured by the Pension Benefit Guarantee Corporation**
- Methods for determining years of service**
- If and how ERISA 404(c) applies**
- Loan procedures, if applicable***

- Internal Revenue Code § 125 (“125 Plan”)
- No other way to have pre-tax payment for group health and other group welfare benefits
- 2007 *proposed* regulations (final regulations on election changes and FMLA interaction only)
- Qualified benefits (separate plan documents cross-referenced)
 - life, AD&D
 - disability
 - health HFSA
 - dependent care DCFSA
 - adoption
- Election/enrollment “forms”

- **Specific description of each benefit and period(s) of coverage**
- **Participation rules (employees only!)**
- **Election procedures and effective periods (irrevocable)**
 - **change in status provisions**
- **Method for making contributions**
 - **pre-tax salary reduction**
 - **ER flex credit (if any)**
- **Maximum contribution**
- **Plan year**
- **For FSAs, additional required and optional provisions**
- **Evidence of adoption and date adopted**

- **Reasons to amend and update**
 - **Statutory and regulatory changes**
 - **Caselaw-driven changes**
 - **Corporate/organizational transactions**
 - **Employer discretionary (“settlor”) changes**
- **Documents to revise**
 - **Plan**
 - **SPD**
 - **Enrollment forms**
 - **Vendor contracts**

- Statutory requirements
- Best practices
 - risk tolerance
 - state law
 - internal policies regarding retention and destruction
- Litigation holds



Add these to your already-long list:

- **Inventory**
- **Prioritize**
- **Review**
- **Remedy**
- **Retain**



IRS Self Audit:

<https://www.irs.gov/Retirement-Plans/Have-You-Had-Your-Retirement-Plan-Check-Up-This-Year>

DOL Self-Audit:

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

DOL Disclosure Guide:

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

QUESTIONS



**Thank you for your participation
in the UBA Employer Webinar Series**

If your question was not answered during the webinar or if you have a follow-up question, you can email the presenters today or tomorrow at:

UBAwebinars@jacksonlewis.com

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