



Human Resources Professionals: Protecting Your Job While Administering Benefits

By Michelle Cammayo

Most employee lawsuits concerning employee benefits originate from violations of Employee Retirement Income Security Act (ERISA) compliance. It is often difficult to speak to human resource professionals regarding their compliance obligations under ERISA, the Health Insurance Portability and Accountability Act (HIPAA), the Affordable Care Act (ACA) and the Internal Revenue Service (IRS).

The complexity of each law makes it difficult for one individual to grasp, especially when that individual is charged with other duties. HR professionals and companies have three options: **eliminate risk, transfer risk or accept risk.**

Eliminating risk may very well prove a lofty goal as our HR team members are overworked and, frankly, eliminating risk may not be the most practical considering other business objectives. The intent of this article is to inform readers that there is a way to transfer some risk that occurs while administering benefits on behalf of your company. I also refer to this as “job protection.”

As an HR/Benefits professional, we deal with sensitive and litigious issues every day. As humans, we inevitably make errors. I will describe insurance coverage your company can purchase so that in the event of an error the HR professional does not fear for his or her job—in addition to the financial burden incurred by the company due to a lawsuit.

A common example of a benefits administration error is not furnishing your employees with a Summary Plan Description (SPD). It is also a typical employee lawsuit under ERISA. If one were to investigate court cases under ERISA, they would find a plethora of cases stemming from employer non-compliance under ERISA’s disclosure and reporting requirements on SPDs.

Summary Plan Description (SPD): the primary vehicle for informing participants and beneficiaries about their plan and how it operates. While benefit summaries and Summaries of Benefits and Coverage (SBC) are helpful to the employee, ERISA does not count them as satisfying the SPD requirement. SPDs *must* be distributed to participants within 90 days of becoming covered by the plan. There are other nuances but for purposes of this article I am relaying the most prominent.

The SPD must be distributed to plan participants. Many employee benefit lawsuits file on the basis that their employer did not provide a Summary Plan Description. In my many years practicing

in employee benefits, I've noticed that perhaps only about 40 percent of benefit professionals (including HR benefit professionals) understand the requirements of a Summary Plan Description. A benefit summary, SBC or benefit brochure does not constitute an SPD.

It is important to note here that the Summary Plan Description incorporates the insurance Evidence of Coverage (EOC) booklets by reference. Meaning, an SPD is not complete without the carrier's Evidence of Coverage booklets.

The SPD requirements are two-fold—each plan participant must receive one, and the employer must provide proof that the SPD was *furnished*, not just distributed. The distinction to note is that “furnished” implies the document was received. In addition, there are electronic disclosure requirements that must be met, so simply posting on a company intranet will not suffice. Due to the complexity of these rules, HR professionals may not follow them properly without the right guidance.

There are many other oversights that can occur which I've described below.

Employee Benefits Liability Errors and Omissions (E&O) provides coverage for exposures resulting from errors/oversight in benefits administration.

Employee Benefits Liability E&O: What is Employee Benefits Liability? Liability of an employer for an error or omission in the administration of an employee benefit program, such as failure to advise employees of benefit programs.

How is this risk insured?

Coverage of this exposure is usually provided by endorsement to the general liability policy but may also be provided by a fiduciary liability policy. Premiums are rated by employee headcount and usually minimal cost. Limits are generally \$1,000,000 per claim and aggregate. Make sure it is scheduled under your Umbrella limits as well.

Covered Acts:

- ❖ Describing benefit plans and eligibility rules to employees, other eligible family members, and beneficiaries
 - **Example:** A benefits manager mistakenly tells an employee that her live-in boyfriend is eligible for the company-sponsored health insurance plan.
- ❖ Maintaining files and records related to employee benefits, whether the records are electronic or paper
 - **Example:** A benefits worker accidentally erases an employee's electronic file or loses his or her paper file.
- ❖ Enrolling, maintaining and terminating employees, eligible family members or beneficiaries in benefit plans
 - **Example:** A benefits worker fails to add an employee's beneficiary to a life insurance plan provided by the employer

Covered Benefits:

- ✓ Life insurance, accident, dental and medical and other types of insurance
- ✓ Pension plans, profit sharing, stock ownership and savings, and other plans
- ✓ Social security, workers compensation, disability and unemployment benefits
- ✓ Others may include benefits such as tuition assistance and maternity leave



Michelle Cammayo has more than a decade of Employee Benefits experience specializing in all lines of health and welfare benefits, including Medical, Dental, Vision, Basic and Voluntary Life, Short and Long-Term Disability and Employee Assistance Programs. Her primary roles and responsibilities include carrier negotiations, strategic oversight, and educating HR staff and employees with regards to employee benefit packages and/or solutions.

With an established track record of providing solutions to clients' unique challenges, Michelle leads with a forward-thinking philosophy and proactive approach to all areas of benefit program management. She has driven the process on Wellness Initiatives, Health Fairs, Employee Benefit Communication Campaigns and Technology Solutions for several clients, and has implemented and serviced alternative funding contracts, including level funding, graded preferred funding, self-funding with stop loss, minimum premium contracts and participating contracts. She also has extensive, hands-on experience with several HRIS systems.