Recent lawsuit stresses protection offered by DOL electronic disclosure safe harbor

By Shari Herrle, Director of Compliance

Plan sponsors distributing ERISA plan benefits information electronically should meet conditions of Department of Labor's (DOL) electronic disclosure safe harbor after recent case law emphasized the importance of clear and consistent communication regarding the denial or loss of benefits to all employees entitled to coverage.

The DOL's safe harbor describes specific circumstances in which plan sponsors may use electronic delivery methods to furnish important information required under ERISA. Simply posting benefit booklets, Summary Plan Descriptions (SPDs), and other important disclosures to an employer intranet or benefit website is not adequate communication unless very specific steps are followed.

We highly recommend our clients take the time to review the DOL's safe harbor and implement the appropriate procedures. While it isn't obligatory, compliance increases the likelihood a court finds the delivery method sufficient and ensures the DOL finds delivery method for benefit information satisfactory and "reasonably calculated to ensure actual receipt."

The safe harbor can be followed for most required disclosures, including insurance certificates, SPDs, SBCs, Medicare Part D Creditable Coverage notices, HIPAA Privacy Notice, etc.

Highlights of the DOL safe harbor requirements

Under the safe harbor, a plan administrator must:

1. use appropriate and necessary means to ensure that posting the SPDs on a company's website results in actual receipt;
2. prepare and furnish the SPDs in accordance with all applicable SPD requirements (such as timing and format requirements);
3. provide a written or electronic notice to employees directing them to the website, at the time the SPD is posted, and describing the SPD's significance and the right to request a paper copy; and
4. provide a paper copy of the SPD on request without charge.

Ensuring “actual receipt”

Significant paperwork requirements are imposed on employers sending electronic disclosures to individuals without computer access as an integral part of their employment duties. The employer must do more than post or send the information; very specific steps must be followed to ensure actual receipt of the information.

- Taking the appropriate and necessary steps to ensure actual receipt could include:
- adding a prominent link from the website’s homepage to the separate section that contains the SPDs;
- providing directions on the website for how to replace a lost or forgotten password to the extent one is needed; and
- maintaining SPDs on the website for a reasonable period of time following notice to employees of their availability.

Fulfilling specific disclosure obligations to disabled employees

Recently, *Raymond Thomas v. Cigna Group Insurance* illustrated the importance of making sure employees know the required documentation and necessary steps to ensure that their company sponsored life insurance benefits will continue while they remain unable to work. This is especially important when the employer provides group life coverage and disability benefits under separate insurance companies.

Want to know more? Contact your HBI consultant or analyst for additional information on the DOL’s safe harbor.