

If We Recently Distributed ERISA Welfare Plan SPDs to Participants, Must Another Copy Be Provided to a Participant Who Requests One?

EBIA Weekly (July 3, 2024)

QUESTION: Just a few weeks ago, we distributed summary plan descriptions (SPDs) to our ERISA welfare plan participants. One participant now has made a written request for a copy of the same SPD. Are we obligated to provide an additional copy?

ANSWER: The short answer is yes, you should provide the additional copy. Nothing in ERISA eliminates the obligation to provide a requested SPD just because it was previously provided in the normal course. Indeed, the requirement to provide copies of plan documents upon request seems intended to protect participants who may have lost previously furnished materials. And failing to provide a copy exposes your company to substantial civil penalties.

Your question involves two distinct ERISA rules: one requires the plan administrator to distribute SPDs to participants at certain specified times, while the other requires the plan administrator to provide copies of certain documents when a participant or beneficiary makes a written request. (We assume that, as with most single employer plans, your company is the plan administrator for ERISA purposes.)

- *Automatic SPD Distribution.* Generally, the SPD for an ERISA welfare plan must be furnished automatically and without charge within 90 days after a participant's plan coverage commences, and at specified intervals depending on whether material changes have been made to the plan. In these instances, SPDs must be furnished automatically to covered participants (i.e., without request). For plans requiring enrollment, a covered participant is an enrolled participant. For plans without mandatory enrollment, a participant becomes "covered" either on the date the plan provides that participation begins or upon becoming potentially eligible for benefits subject to a triggering event (as would be the case in a severance plan, for example). There is no requirement to automatically furnish SPDs to beneficiaries.
- *Participant or Beneficiary Document Requests.* A plan administrator must provide copies of certain documents, including the latest SPD (and any summary of material modifications), when a participant or beneficiary makes a written request. When providing requested documents, it is permissible to charge reasonable copy costs (up to the lesser of 25 cents per page or the plan's actual cost) but not other fees or costs such as for handling or postage. If the requested documents are not provided within 30 days, the participant or beneficiary may sue the plan administrator for penalties of up to \$110 for each day of delay. Although courts rarely assess the full \$110 penalty, even reduced penalties can become significant when calculated on a daily basis.

Importantly, the range of documents that may be requested is broader than the range of documents that must be provided automatically. Other key differences between these two sets of rules include the

expanded group who may request plan-related materials, the shorter time period for furnishing requested documents, the ability to charge copying costs for requested materials, and the penalty risk.

Bottom line: To comply with ERISA and avoid potential penalties, you should furnish the requested SPD to the participant even if it was just distributed to all participants.

For more information, see EBIA's ERISA Compliance manual at Sections XXIV.D ("Who Must Be Furnished With SPDs and SMMs?"), XXIV.E ("When Must SPDs and SMMs Be Furnished?"), XXV.A ("Participant and Beneficiary Right to Request and Examine Documents"), and XXV.B ("Consequence of Failing to Furnish Documents: Up to \$110 Per Day Penalties"). See also EBIA's Self-Insured Health Plans manual at Section XXVIII ("Participant Disclosure Requirements for Self-Insured Health Plans").

Contributing Editors: EBIA Staff.