

Why an Employer Needs a “Wrap” Plan Document for its Employee Welfare Benefit Plans

What is an Employee Welfare Benefit Plan? Under ERISA, an employer that provides certain benefits to its employees, such as medical insurance or other types of coverage, is considered to have established an “employee welfare benefit plan.” With only a few exceptions, providing welfare benefits to its employees requires the employer to comply with ERISA, regardless of employer size, number of employees, or whether the benefits are paid for by the employer or its employees, through insurance or self-funding, or with pre-tax or after-tax money.

Types of Employer Welfare Benefit Plans. Employer-provided benefits which are considered “employee welfare benefit plans” under ERISA include:

- Medical, dental, and vision insurance plans;
- Health flexible spending accounts (also known as health care reimbursement accounts);
- Prescription drug plans;
- Accidental death and dismemberment (“AD&D”) insurance plans;
- Long-term and short-term disability plans; and
- Group term life insurance plans.

Written Plan Document. An employee welfare benefit plan under ERISA must have a written plan document containing all of the terms governing the plan. A written contract of insurance with an insurance company does not normally contain all of the rules required by ERISA and is therefore not a plan document. A well-drafted plan document typically specifies things such as eligibility requirements, plan participation rules and the length of coverage. It also contains important statements by the employer such as the employer’s right to amend or terminate the plan at any time.

What is a “Wrap” Document? A “wrap” document is a drafting device used to supplement already-existing documentation. More specifically, a wrap document provides the information required by ERISA by incorporating (or “wrapping” itself around) the insurance policy or similar third-party contract. When a wrap document is utilized, the insurance policy or contract remains part of the plan document. That is, the “wrap” document and the insurance policy or contract *together* comprise the complete plan document.

Why Does an Employer Need a “Wrap” Document? The insurance policy or contract issued to an employer rarely meets all the requirements of an ERISA plan document. This is not surprising given that an insurer’s main focus is generally on complying with state laws regulating insurance and *not* on ERISA compliance. Even when insurers attempt to satisfy ERISA’s requirements, the resulting document does not typically contain all of the provisions designed to protect the plan, the plan administrator, and other plan fiduciaries. Consequently, the use of a “wrap” plan document ensures ERISA compliance (through the “wrap” portion of the document) as well as an accurate insurer-provided benefit description (through the incorporation of the insurance policy or contract).

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