

Regulatory Compliance Checklist

Benefits

Plan Documentation

- Have plans been timely adopted especially Section 401(k) and cafeteria (Section 125) plans, prior to any pre-tax withholding?
- Have retirement and welfare benefit plans been timely amended to reflect changes in the law or operational changes?
- Have employment agreements, separation agreements and change in control agreements been reviewed for [Section 409A compliance](#)?
- If you are a multinational business, have nonqualified deferred compensation arrangements been reviewed for Section 457A compliance?

Summary Plan Descriptions (when applicable)

- Has an SPD been provided to new participants and beneficiaries?
- Is your SPD current, either by updating with Summaries of Material Modifications (SMMs) or through an update of the SPD itself?
- Have the periodic redistribution requirements for SPDs under ERISA been satisfied?
- Have applicable foreign language requirements been met?

Plan Notices

- Have various required notices for retirement plans been distributed (such as the safe harbor notice in the case of certain Section 401(k) plans, ERISA Section 404(a)(5) fee disclosures and the QJSA explanation for plans offering annuities)?
- Are you properly distributing welfare benefit notices (such as the HIPAA Notice of Privacy Practices, the annual Women's Health and Cancer Rights Act notice and federal health care reform notices, as applicable)?

Plan Testing

- Are various nondiscrimination tests properly performed for retirement plans, welfare plans and fringe benefit plans annually?
- Are tax law or plan limits being properly applied, updated and monitored (such as the dollar cap on Section 401(k) contributions or health care flexible spending accounts)?

Annual Reporting

- Are you filing Form 5500, where applicable, and distributing the Summary Annual Report?
- Have you filed the one-time "top hat" notice for nonqualified deferred compensation plans to avoid annual filings?
- Are you obtaining actuarial reports and/or audited financial statements as appropriate to the plan?
- Are you updating the Social Security Administration via Form 8955-SSA to reflect participants previously reported who have recently received a distribution?

COBRA and HIPAA

- Are you timely distributing an initial COBRA notice?
- Are you timely distributing COBRA election paperwork upon triggering events (such as a reduction in hours that results in a loss of coverage)?
- Are you properly administering COBRA (amount, due dates, etc.)?
- Are notices of special enrollment rights under HIPAA being timely distributed?
- Do your plan documents and business associate contracts properly reflect HIPAA's current privacy and security requirements?
- Are you satisfying the privacy and security requirements under HIPAA with respect to protected health information (PHI)?

Executive Benefits

- Have change in control agreements been designed to address potential golden parachute issues?
- Are registration statements on file (and prospectuses and other required information distributed) for public companies with equity plans, nonqualified deferred compensation plans and/or retirement plans holding company stock?
- Are fringe benefits (such as spousal travel and personal use of aircraft) being properly reported for tax and securities law purposes?

Administrative Issues

- Have you confirmed that any “independent contractors” to the company are properly characterized as independent contractors for various federal and state law purposes?
- Have you reviewed the eligibility rules in your benefit plans and confirmed the ineligible status of otherwise excluded employees?
- Are you maintaining adequate fiduciary bond coverage when required?
- Have you solicited beneficiary designation forms for all benefits to which they may be relevant?
- Are you timely depositing any withheld Section 401(k) contributions and loan repayments into any Section 401(k) plan’s related trust?
- Are you monitoring compliance with the required minimum distribution rules (age 73) in the case of a retirement plan?
- If applicable, have you designed your group health plan, and are you monitoring employee eligibility and filing applicable Forms 1094 and 1095, to avoid “pay or play” mandate penalties under federal health care reform?

If you would like to receive more comprehensive retirement plan or welfare plan compliance checklists, please contact:



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