

# WELFARE PLAN DOCUMENTS: WHAT YOU NEED TO KNOW

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# Agenda

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- Types of Welfare Benefits
- Understanding the Documents
- Which Documents Do You Need

# The Universe of Welfare Benefits

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- Medical
- Dental
- Vision
- Prescription Drug
- Retiree Medical
- Disability (Short Term/Long Term)
- Life Insurance
- Accidental Death & Dismemberment (AD&D)

# The Universe of Welfare Benefits

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- Pre-Tax Premium Payments
- Health Flexible Spending Account
  - ▣ General Purpose
  - ▣ Limited Purpose
  - ▣ Post-Deductible
- Dependent Care Assistance Program
- Health Savings Account
- Adoption Assistance Program
- Health Reimbursement Arrangement
- Flex Credits

# The Universe of Welfare Benefits

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- ❑ Employee Assistance Program (EAP)
- ❑ Wellness Benefits
- ❑ Purchase/Sale of Paid Time Off (PTO)
- ❑ Business Travel Accident
- ❑ Pre-Paid Legal
- ❑ Qualified Education Assistance/Tuition Remission
- ❑ Transit Benefits
- ❑ On-Site Nurse/Clinic
- ❑ Voluntary Plan Benefits

# Understanding the Documents

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Welfare benefits generally require a written plan document.

Why should we care about plan documents?

- ❑ Penalties apply for non-compliance
  - ❑ DOL welfare plan audits
  - ❑ Gaps in plan documentation invite the courts to decide the plan terms for you (or your clients)
    - ▣ Lose the benefit of employer's authority to construe and interpret the plan terms, discretion to determine benefits and payments
- Avoid unhappy clients who discover their plan documentation was not complete

# Understanding the Documents

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We have an insurance contract/benefits booklet from the carrier, isn't that the plan?

- Insurance booklets are just one part of the plan
- Need to fill in gaps left by insurance contract or booklet
- Add language will protect the employer/plan sponsor/plan administrator

# Understanding the Documents

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There are different types of welfare plan documents:

- ERISA Plan Documents
- Section 125 Documents
- Other Written Plan Documents



# ERISA Plan Documents

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- All ERISA-governed plans must have a written plan document
  - ▣ Can incorporate multiple documents
    - Group Insurance Policy
    - Certificate of Coverage
    - Benefits Booklet/Benefits Summary
    - Policy Application
    - Enrollment Materials
    - Eligibility List
    - Separate Written Plan Documents

# ERISA Plan Documents

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- ERISA Written Plan Document must:
  - ▣ Name a fiduciary who will control and manage operation and administration of plan
    - For example: Plan Sponsor or Benefits Committee
  - ▣ Contain a procedure for establishing and carrying out funding policy and method, consistent with Title I of ERISA and the plan's objectives
    - This includes insurer refunds/rebates, etc.
  - ▣ Describe a procedure for amending plan and for identifying individuals with authority to amend plan
    - e.g., The Board can amend or terminate the Plan at any time by written instrument.

# ERISA Plan Documents

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- ERISA Written Plan Document should:
  - List the enumerated powers of the fiduciary/administrator
    - to construe and interpret the plan
    - to decide claims
    - to delegate authority to others
    - to establish a plan committee (if applicable), and define its role and operations
  - Describe the allocation of plan operation and administration responsibilities

# ERISA Plan Documents

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- ERISA Written Plan Document must:
  - Describe a procedure for benefit claim denials and “full and fair” review of denials
  - Describe the basis on which payments are made to and from plan
  - Describe how plan assets will be distributed on plan termination
  - Contain HIPAA privacy and security provisions

# ERISA Plan Documents

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- Stand-Alone ERISA Plans
  - ▣ Each plan is an island
  - ▣ Each has its own written plan document
  - ▣ Each has its own separate Form 5500 Annual Report (if subject to the 5500 requirement)
  - ▣ Plan document consists of:
    - Certificate of coverage/benefits booklet/policyplus
    - A written plan document (not from the insurer/carrier) that contains legally required/recommended terms

# ERISA Plan Documents

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## □ Typical Structure for Stand-Alone ERISA Plans

### □ Option #1:

- ABC Co. Medical Plan - Plan #501
- ABC Co. Dental Plan - Plan #502
- ABC Co. Long-Term Disability Plan - Plan #503

### □ Option #2:

- ABC Co. Group Medical, Dental & Vision Plan - Plan #501
- ABC Co. Group Disability Insurance Plan (STD & LTD) - Plan #502

→ Multiple plans, separated by type

# ERISA Plan Documents

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## □ ERISA Wrap Plan

- Wrap plan document: allows plan sponsor to “wrap” or bundle its various ERISA welfare plans into a single plan
- Creates a single employee welfare benefit plan, for ERISA purposes
- Incorporates the various ERISA benefit programs and their components
- AKA: umbrella plan, bundled plan, mega-wrap, wrapper plan

# ERISA Plan Documents

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- ERISA Wrap Plan
  - ▣ *The ABC Co. Group Welfare Benefits Plan (Plan #501)*
  - ▣ Wrap Plan consists of
    - **Base wrap plan** document (not from insurer/carrier) with legal and other provisions
    - Individual benefit programs are described and identified in the wrap plan document (e.g., Appendix or Schedule)
    - Applicable **booklets, certificates, policies**, etc. that apply to each benefit program are attached to the wrap plan document
      - Medical Benefits Booklet from Insurer A
      - Dental Insurance Policy from Insurer B ... etc.



# ERISA Plan Documents

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- What Plans Get Wrapped?
  - Wrap plan bundles ERISA plans
  - Must identify the plans being wrapped
    - Medical, dental, vision, prescription drug
    - LTD and STD
    - Life and AD&D
    - Business Travel
    - Employee Assistance Program (EAP)
    - Wellness plans
    - Health Care Flexible Spending Account (FSA) offered under the Section 125 Cafeteria Plan

# Stand-Alone Plans

## Group Health Plan

- Medical
- Dental
- Vision
- Rx

## Group Disability Plan

- STD
- LTD

## Group Life

- Life Insurance
- AD&D

## Section 125 Cafeteria Plan

- Health FSA
- DCAP
- Pre-Tax Premiums

Separate plan doc  
SPD  
5500

Separate plan doc  
SPD  
5500

Separate plan doc  
SPD  
5500

Separate plan doc  
SPD for Health FSA  
5500 for Health FSA

# Wrap Plan Document

## Welfare Benefit Plan (Wrap Plan)

- Medical/Dental/Vision/Rx
- LTD & STD
- Life Insurance & AD&D
- Health FSA Benefit in Cafeteria Plan

## Section 125 Cafeteria Plan

- Health Care FSA
- DCAP
- Pre-Tax Premiums
- HSA

One plan doc -  
with multiple attachments  
One SPD - multiple parts  
One 5500 - multiple schedules

One plan doc  
No additional SPD required  
(but summary is recommended)  
No separate 5500 needed

# ERISA Plan Documents

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- Should I Wrap or Stand Alone?
  - ▣ Both can accomplish the job
  - ▣ Wrapping does not change content or substance, just form and number of ERISA plans
  - ▣ Wrap Plan can streamline documents to manage
    - Requires only one base plan document, one SPD and one Summary Annual Report (SAR)
    - Can still issue and produce separate SPDs as desired

# ERISA Plan Documents

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- 5500 Reporting Differences
  - 5500 reporting structure is different, but info reported is not
  - Each ERISA welfare plan is subject to the annual Form 5500 reporting, unless an exemption applies
  - Multiple separate plans → multiple 5500 reports each year
  - Single wrap plan that incorporates multiple welfare benefit programs → single 5500 report each year
    - With schedules for each applicable benefit component

# ERISA Plan Documents

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- Tips for Wrapping Well:
  - ▣ Gather and review all documents
  - ▣ Avoid creating conflicts between the documents
    - Be consistent in referencing plan names, number, etc.: in the Appendices, the SPDs, the 5500s, other plan disclosures
    - Underlying benefit program documents may require updates and revisions
      - plan names/numbers
      - plan administrator identification and roles
    - Watch for “General Information” in the booklets

# ERISA Summary Plan Description

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- Summary Plan Description (SPD)
  - ▣ Just like the plan document, an SPD can be made up of multiple documents
  - ▣ Just like the plan document, insurer/provider booklets usually lack certain requirements
  - ▣ SPD may be comprised of:
    - Benefits Booklet, Summary, Handbook, Policy Guide plus
    - ERISA SPD Insert/Supplement – adding in the required/recommended provisions not covered in the above documents

# ERISA Summary Plan Description

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- Summary Plan Description (SPD)
  - SPD content is governed by regulations
    - **§2520.102-3 - Contents of summary plan description**
  - Plan Document and SPD “should” be separate
    - Otherwise, what does the SPD summarize?
    - SPD must be written to be understood by the average participant
    - Ask: is this document written to be understood by participants?



# ERISA Summary Plan Description

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- Different SPD Formats
  - ▣ Each stand-alone ERISA plan has an SPD requirement
    - The ABC Co. Medical Plan SPD – can be comprised of the benefits booklet and ERISA insert/supplement
  - ▣ Wrap plan has an SPD requirement
    - The ABC Co. Group Welfare Plan SPD – can be comprised of multiple plan benefits booklets and the ERISA insert/supplement
  - ▣ ERISA insert/supplement can vary:
    - One per stand-alone plan: an SPD insert for the Medical Plan
    - One per category of plans: an SPD insert for the med/dental/vision coverage and an SPD insert for the disability plans
    - One insert, period: an SPD insert that contains all the ERISA and other recommended provisions that apply to the various benefits

# Section 125 Plan Documents

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- ❑ Certain tax-advantaged benefits must be included in a Section 125 plan document
- ❑ Proposed IRS regulations state that the plan document must include certain provisions, including:
  - ❑ Description of benefits
  - ❑ Participation rules
  - ❑ Election procedures
  - ❑ Types of contributions
  - ❑ Maximum contributions
  - ❑ Plan year

# Other Plan Documents

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- Some Non-ERISA, non-Section 125 welfare benefits also require a plan document
- Tax code does not specify document requirements. Recommended provisions include:
  - ▣ Who is eligible
  - ▣ What are the benefit
  - ▣ What are the limitations
  - ▣ How are benefits distributed
  - ▣ Right to amend and terminate at any time

# Understanding the Documents

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- When do I need a written plan document and SPD?
- Questions to consider:
  - ▣ Is the benefit subject to ERISA?
  - ▣ Is the benefit tax-advantaged?
  - ▣ Does the benefit offer the choice between cash (wages) and a benefit/reimbursement?

# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA ?</b>	<b>Plan Document(s)</b>	<b>SPD Required ?</b>
Health/Medical	Yes	Wrap or Stand-alone	Yes
Dental	Yes	Wrap or Stand-alone	Yes
Vision	Yes	Wrap or Stand-alone	Yes
Prescription Drug	Yes	Wrap or Stand-alone	Yes
Retiree Medical	Yes	Wrap or Stand-alone	Yes

# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA?</b>	<b>Plan Document(s)</b>	<b>SPD Required?</b>
Employee Assistance Program (EAP)	Maybe	Wrap or Stand-alone	Yes if ERISA
Wellness Benefits	Maybe	Wrap or Stand-alone	Yes if ERISA

# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA ?</b>	<b>Plan Document(s)</b>	<b>SPD Required?</b>
Short-Term Disability	Maybe	Wrap or Stand-alone if ERISA; Written policy recommended if non-ERISA	Yes if ERISA
Long-Term Disability	Usually	Wrap or Stand-alone if ERISA	Yes if ERISA
Business Travel Accident	Yes	Wrap or Stand-alone	Yes

# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA ?</b>	<b>Plan Document(s)</b>	<b>SPD Required?</b>
Pre-Tax Premium	No	Section 125 Plan – Premium Only Plan (POP) or Cafeteria Plan	No; summary is recommended
Health Care FSA	Yes	ERISA Plan Document (Wrap or Standalone); Section 125 Cafeteria Plan	Yes
Dependent Care Assistance Program (DCAP) Account	No	Section 125 Cafeteria Plan	No; summary is recommended
Adoption Assistance FSA	No	Section 125 Cafeteria Plan	No; summary is recommended



# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA ?</b>	<b>Plan Document(s)</b>	<b>SPD Required?</b>
Health Reimbursement Arrangement (HRA)	Yes	Wrap or Standalone	Yes
Health Savings Account (HSA)	Usually Not	Section 125 Cafeteria Plan	No; summary is recommended
PTO Purchase/Sale	No	Section 125 Cafeteria Plan	No; summary is recommended
Flex Credits	No	Section 125 Cafeteria Plan	No; summary is recommended

# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA ?</b>	<b>Plans Document(s)</b>	<b>SPD Required?</b>
Educational Assistance/ Tuition Remission	No	Written Plan Document (non-ERISA)	No; summary is recommended
Transit Benefits	No	Written Plan Document (non-ERISA)	No; summary is recommended
Adoption Assistance Program	No	Written Plan Document (non-ERISA)	No; summary is recommended
Dependent Care Assistance	No	Written Plan Document (non-ERISA)	No; summary is recommended
Pre-Paid Legal	Yes	Wrap or Stand-alone	Yes

# Which Documents for Which Benefits?

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<b>Benefit/Plan</b>	<b>ERISA ?</b>	<b>Plans Document(s)</b>	<b>SPD Required?</b>
On-Site Nurse/Clinic	Maybe	Wrap or Stand-alone if ERISA	Yes if ERISA
Voluntary Plan Benefits	No	None	No

# Keeping Track

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- **Section 125 Plan** for benefits that offer choice between cash and the benefit:
  - Pre-Tax Premiums
  - Health FSA (\**ERISA*)
  - Dependent Care Account
  - Adoption Assistance FSA
  - Health Savings Account (HSA)
  - PTO Purchase/Sale
  - Flexible Benefit Credits

# Keeping Track

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- ❑ **Wrap or Standalone Plan Document and SPD** for benefits that are subject to ERISA
  - ❑ Medical/Health
  - ❑ Dental
  - ❑ Vision
  - ❑ Prescription Drug
  - ❑ Retiree Medical
  - ❑ Disability (Short-Term/Long Term)
  - ❑ Health FSA
  - ❑ Wellness Benefits
  - ❑ Business Travel
  - ❑ Accident
  - ❑ Health Reimbursement Arrangement (HRA)
  - ❑ Employee Assistance Program (EAP)
  - ❑ Pre-Paid Legal

# Keeping Track

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- **Non-ERISA Written Plan Document** for tax-advantage benefits that require documentation
  - Educational Assistance/Tuition Remission
  - Adoption Assistance Program (non-FSA)
  - Dependent Care Assistance Program (non-FSA)
  - Transit Benefits

# Questions/Contact Information

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