WELFARE PLAN DOCUMENTS: WHAT YOU NEED TO KNOW

Presented by:
Stacey Austin & Jennifer Kobayashi

February 28, 2017
Agenda

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

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

- Pre-Tax Premium Payments
- Heath 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

- 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

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

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

There are different types of welfare plan documents:

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

- 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

- 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 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

© Wang Kobayashi Austin, LLC. All rights reserved.
ERISA Plan Documents

- 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
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/policy plus
  - A written plan document (not from the insurer/carrier) that contains legally required/recommended terms
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

- **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

© Wang Kobayashi Austin, LLC. All rights reserved.
ERISA Plan Documents

- 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

- 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

- 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

- 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
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

- 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:
    - ERISA SPD Insert/Supplement – adding in the required/recommended provisions not covered in the above documents
ERISA Summary Plan Description

- **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?
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
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
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

- 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?

<table>
<thead>
<tr>
<th>Benefit/Plan</th>
<th>ERISA Required</th>
<th>Plan Document(s)</th>
<th>SPD Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health/Medical</td>
<td>Yes</td>
<td>Wrap or Stand-alone</td>
<td>Yes</td>
</tr>
<tr>
<td>Dental</td>
<td>Yes</td>
<td>Wrap or Stand-alone</td>
<td>Yes</td>
</tr>
<tr>
<td>Vision</td>
<td>Yes</td>
<td>Wrap or Stand-alone</td>
<td>Yes</td>
</tr>
<tr>
<td>Prescription Drug</td>
<td>Yes</td>
<td>Wrap or Stand-alone</td>
<td>Yes</td>
</tr>
<tr>
<td>Retiree Medical</td>
<td>Yes</td>
<td>Wrap or Stand-alone</td>
<td>Yes</td>
</tr>
</tbody>
</table>

© Wang Kobayashi Austin, LLC. All rights reserved.
## Which Documents for Which Benefits?

<table>
<thead>
<tr>
<th>Benefit/Plan</th>
<th>ERISA?</th>
<th>Plan Document(s)</th>
<th>SPD Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee Assistance Program (EAP)</td>
<td>Maybe</td>
<td>Wrap or Stand-alone</td>
<td>Yes if ERISA</td>
</tr>
<tr>
<td>Wellness Benefits</td>
<td>Maybe</td>
<td>Wrap or Stand-alone</td>
<td>Yes if ERISA</td>
</tr>
</tbody>
</table>
### Which Documents for Which Benefits?

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

© Wang Kobayashi Austin, LLC. All rights reserved.
# Which Documents for Which Benefits?

<table>
<thead>
<tr>
<th>Benefit/Plan</th>
<th>ERISA ?</th>
<th>Plan Document(s)</th>
<th>SPD Required?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-Tax Premium</td>
<td>No</td>
<td>Section 125 Plan – Premium Only Plan (POP) or Cafeteria Plan</td>
<td>No; summary is recommended</td>
</tr>
<tr>
<td>Health Care FSA</td>
<td>Yes</td>
<td>ERISA Plan Document (Wrap or Standalone); Section 125 Cafeteria Plan</td>
<td>Yes</td>
</tr>
<tr>
<td>Dependent Care Assistance Program (DCAP) Account</td>
<td>No</td>
<td>Section 125 Cafeteria Plan</td>
<td>No; summary is recommended</td>
</tr>
<tr>
<td>Adoption Assistance FSA</td>
<td>No</td>
<td>Section 125 Cafeteria Plan</td>
<td>No; summary is recommended</td>
</tr>
<tr>
<td>Benefit/Plan</td>
<td>ERISA?</td>
<td>Plan Document(s)</td>
<td>SPD Required?</td>
</tr>
<tr>
<td>-------------------------------------------------</td>
<td>--------</td>
<td>------------------------------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Health Reimbursement Arrangement (HRA)</td>
<td>Yes</td>
<td>Wrap or Standalone</td>
<td>Yes</td>
</tr>
<tr>
<td>Health Savings Account (HSA)</td>
<td>Usually Not</td>
<td>Section 125 Cafeteria Plan</td>
<td>No; summary is recommended</td>
</tr>
<tr>
<td>PTO Purchase/Sale</td>
<td>No</td>
<td>Section 125 Cafeteria Plan</td>
<td>No; summary is recommended</td>
</tr>
<tr>
<td>Flex Credits</td>
<td>No</td>
<td>Section 125 Cafeteria Plan</td>
<td>No; summary is recommended</td>
</tr>
</tbody>
</table>
## Which Documents for Which Benefits?

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

© Wang Kobayashi Austin, LLC. All rights reserved.
### Which Documents for Which Benefits?

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

© Wang Kobayashi Austin, LLC. All rights reserved.
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

- 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
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

Stacey Austin
stacey.austin@wkalegal.com
(312) 833-5298

Jennifer Kobayashi
jen.kobayashi@wkalegal.com
(312) 833-5299