



A SIMPLE SOLUTION

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ERISA (Employee Retirement Income Security Act) regulations can often appear to be confusing, complex, and to some, “subject to interpretation”, given the voluminous amount of information that must be extrapolated and processed from within the body of this law by employers.

When it comes to eligibility **requirements** though, the tenets on this subject under ERISA are crystal clear: a company has a legal responsibility to pay benefits only to a health plan's eligible participants.

According to Benjamin J. Conley, Partner at Seyfarth & Shaw, an employer's responsibility in this realm is simple and straightforward: “ if a plan covers someone who does not meet that definition (under ERISA) of an eligible participant, that's a breach of fiduciary duty.”

For years, many employers have either ignored or failed to acknowledge this remarkably basic aspect of plan sponsorship oversight; the **requirement** to prove and validate that any and all participants in an employer sponsored group policy are in fact, eligible to receive those benefits.

In the past, the enforcement and subsequent penalties that could be assessed by the Department of Labor (the agency most associated with monitoring ERISA violations due to non-compliance and fiduciary breaches) were rather limited in scope. Beginning in 2020 though, and moving forward into this year, that has changed – **significantly**.

The Department of Labor's Employee Benefits Services Administration (EBSA) now **routinely conducts audits** of group health benefit plans to investigate or audit the plan's compliance. In addition, the Health Benefits Security Project (HBSP) established under the PPACA, adds to the EBSA's compliance and enforcement initiatives. EBSA stated in their current Strategic Plan that they want to double the number of reporting compliance reviews conducted by 2023 from 1,707 in FY 2117 totaling \$1.1B to 3500+.

If an employer is found to have been non-compliant and/or non-responsive to instituting the proper benefit plan control and safeguards relative to ERISA, they can also be subject to **sizeable** financial penalties under section 502(i) of ERISA. As noted repeatedly herein, the failure by an employer or designated third party administrator to determine and certify eligibility for all plan participants, is a clear-cut **ERISA violation**.

Fortunately, the remedy to this problem is a simple one:

Employers need to implement a comprehensive **dependent eligibility verification** initiative which will demonstrate that the plan is in full compliance with federal law by ensuring that only eligible participants are on the plan and that the plan is administered in accordance with its corresponding documents. Keep in mind that if you are not verifying eligibility, you are by default, almost certainly allowing exceptions, even if they are unintentional ones. As a result, you are essentially amending eligibility for other participants, thus making it difficult or impossible to protect your plan in the future.

FOR ADDITIONAL INFORMATION ON DEPENDENT ELIGIBILITY VERIFICATION SERVICES:
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