

The Importance of Employee Benefits Liability

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EMPLOYEE BENEFITS are an integral component of any size business, from the mom and pop dry cleaner to the multinational corporation. Employers are not always required to offer benefits to their employees. Those that do, however, are subject to federal regulations. The Employee Retirement Income Security Act of 1974, more commonly known as ERISA, sets the minimum standards for benefit plans. Noncompliance can lead to assessments and fines. Helping clients understand the benefits of and the need for employee benefits liability coverage, is another sign of the true insurance professional.

Although ERISA was initially enacted to address perceived mismanagement of pension plans, it has expanded over the years to address a range of healthcare legislation. Examples include the Consolidated Omnibus Reconciliation Act of 1985 (COBRA), the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Patient Protection and Affordable Care Act (ACA) of 2010. COBRA provides options for extended health care to former employees under certain circumstances. HIPAA was intended to make insurance coverage more portable and secure for employees. ACA brought widespread healthcare reform, including increased enforcement power. (www.dol.gov)

Employee benefits liability coverage (EBL) is available as an endorsement to a general liability policy, or as a separate policy. The coverage applies to the employer's liability for errors or omissions in the administration of an employee benefit plan, including failing to notify employees of employee benefit plans, or claims that a plan, such as a retirement savings plan, was mismanaged. (www.irmi.com) There is no "standard" EBL policy, so it is

important to review and understand the differences each insurer offers.

ERISA is administered by the United States Department of Labor's Employee Benefits Security Administration (formerly the Pension and Welfare Benefits Program). Their Reporting and Disclosure Guide for Employee Benefit Plans is a "quick reference tool" to the basic requirements. The website includes a number of other helpful resources for consumers and employers. (www.dol.gov/ebsa).

Compliance with ERISA consists of three parts: reporting, disclosure and paying claims. Employers must follow annual reporting procedures outlined by ERISA and the IRS. Disclosure of certain facts about the benefits plans must be disclosed to employees. The steps in the claims payment process must be clearly outlined in the plan documents and provided to the employees. (www.thehrspecialist.com)

Under the Affordable Care Act (ACA), most employers with 50 or more full-time employees are required to offer health coverage to their full-time employees, or make "assessable payments" to the Internal Revenue Service (IRS). An employer may attempt to circumvent these requirements by converting employees to "part time" or classifying them as "independent contractors". A "misclassified employee" or one who is inaccurately classified as an "independent contractor" or "part-time employee" may have a cause of action against their employer under ERISA. In addition, the Department



of Labor and IRS may also take action against employers for failure to offer coverage as outlined under ACA.

Providing improper advice to employees can lead to an EBL claim. In a recent case, an employee notified her employer that she required hospitalization. The employer advised the employee that the Health Maintenance Organization (HMO) insurer did not need to be notified, which was incorrect. The HMO denied coverage to the employee for failure to notify. The employee subsequently sued the employer for the improper advice that led to denial of benefits. The case was settled for the full limits of the EBL policy (\$500,000) plus attorney fees. (www.airbrokers.com)

Employee benefits liability can be a very important coverage for any employer. Helping clients understand the importance, as well as the coverages and when they might be needed, is another value-added service of the professional insurance agent.

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