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Handbooks are important for many reasons such as informing employees of their rights and duties, communicating available resources, and outlining paid time off policies. With respect to health and welfare benefits, here are a few things to consider:

1. Does your handbook go too far?

Handbooks cannot change the terms of governing benefit documents such as summary plan descriptions (“SPDs”). Handbook provisions should mirror plan terms and/or refer to plan documents. Any provisions purporting to amend plan documents are ineffective.

However, handbooks may fill in the blanks where the plan documents are silent or refer to outside policies. For example, an SPD may indicate that certain eligibility criteria is determined by the employer. In this case, that criteria may be explained elsewhere such as a handbook or benefit booklet.

2. Are all handbook provisions current?

A handbook should reflect current, compliant provisions such as those addressing benefits, eligibility, and termination.

- Does your handbook exclude certain employee groups from benefits (e.g., temporary employees or interns)? If so, be aware of potential exposure under the Employer Penalty which defines a “full-time employee” as any employee who works at least 30 hours per week. There are no exclusions of categories of employees. However, if using the look back measurement method, part-time employees, seasonal employees, and variable hour employees can be asked to wait up to 13+ months to determine full-time employee status without penalty.
- Does the handbook contain an outdated waiting period (e.g., indicating that plan entry is the first day of the month following 90 days of continuous service)?
- Does the handbook contain conflicting eligibility terms? For example, does the handbook indicate that an employee must work at least 40 hours per week to be eligible for benefits when an employee must only work at least 30 hours per week?
- If the look back measurement method rules are being used, are those referenced or outlined?

- Does the handbook indicate that same-sex spouses are excluded from benefit eligibility? Excluding same-sex spouses is not advisable due to recent court cases and EEOC discrimination inquiries and likely conflicts with plan terms. It may also conflict with the company anti-discrimination workplace policy.

3. Does the handbook demonstrate that an offer of coverage was made?

Under the Employer Penalty rules, an employee must be offered an effective opportunity to accept coverage at least once with respect to the plan year. Final regulations do not apply any specific rules for demonstrating that an offer of coverage was made.

Many employers require an affirmative waiver of medical benefits. This is the best method to prove an offer was made, provided that a waiver can be collected from every single employee waiving. Otherwise, any waiver not returned by the employee arguably proves that he was never made the offer.

When an affirmative waiver is not required, otherwise documenting information regarding the election process is key. An employer will want to show that employees received sufficient information about the offer so that they must have known medical coverage was available. A widely-distributed handbook with clear information about the offer and its terms can be a valuable part of an employer's distribution of information as well as benefit booklets, email correspondence, posters, mandatory meetings, etc., as applicable.

If you need assistance with creating or modifying your handbook, please contact us and we can help you with a solution.

