

FORGET SPRING – GOVERNMENT AUDITS ARE IN THE AIR!

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Employers are all too familiar with the more common investigation efforts by government agencies, such as an EEOC investigation blossoming from a single employee Title VII or ADEA charge into an onsite investigation of purported pattern and practice violations, or HHS turning a self-reported breach into a broad review of HIPAA compliance. But the government is increasingly expanding and using its investigation tools in less common areas. Audits are in the air – are you ready?

Consider whether your policies, practices and files are in order on the following subjects:

- **Health Plan Audits under the Health Benefits Security Project (“HBSP”):** This audit initiative is part of the Employee Benefits Security Administration (“EBSA”) National Enforcement Projects. It includes a broad range of healthcare investigations as well as enforcement of the Affordable Care Act (“ACA”). More specifically, EBSA will review plans for documentary and operational compliance with the protections of Part 7 of ERISA which includes the Women’s Health and Cancer Rights Act, the Newborns’ and Mothers’ Health Protection Act, the Mental Health Parity and Mental Health Parity Addiction Equity Act, the Genetic Information and Nondiscrimination Act and Michelle’s Law – as well as the Health Insurance Portability and Accountability Act’s portability and nondiscrimination requirements. EBSA’s ACA compliance review encompasses market reforms, patient protections, extension of dependent coverage, internal claims and appeals, external reviews and grandfathered plans. In addition, the HBSP continues EBSA’s long standing commitment to identify and eliminate abusive multiple employer welfare arrangements (MEWA’s).
- Preparation for an audit under the HSBP should include: first and foremost, make sure you have a plan and SPD; review plan documents to ensure compliance with applicable law; demonstrate operational compliance with eligibility terms; and be ready to promptly respond to plan document requests thereby demonstrating good faith and hopefully minimizing the need for follow up inquiries. Requested documents typically include the plan, SPD, participant notices, certificate of coverage, claims procedures, and the most recent 3 years’ returns. See the DOL audit checklist for a more comprehensive list of requested documents.

- **Family and Medical Leave Act (FMLA):** Over the past year, the DOL has signaled an intent to enhance its compliance investigations, including increasing the frequency of onsite which are likely to include not only a review of policies and records, but interviews with both management and non-management employees.
- Preparation for a potential government audit should include: review policies, forms, notices, communications and practices to make sure they are up-to-date and in compliance with the current regulations (which were revised in 2013); ensure that the FMLA poster is appropriately displayed in the workplace; conduct updated training for both HR and managers, both with respect to the law and your policies; and confirm that required paperwork is being maintained for the correct time period and in the correct manner.
- **Form I-9:** United States law requires employers to obtain and retain completed Form I-9s on their employees in order to document the verification of the identity and employment authorization of each new employee hired after November 6, 1986, to work in the United States. Officers from various US agencies, including ICE (U.S. Immigration and Customs Enforcement, the investigative arm of the Department of Homeland Security), have the right to conduct onsite inspections of an employer's I-9 records. Penalties for non-compliance with the regulations can include civil fines and criminal penalties.
- Preparation for a potential government audit should include: ensure that you have obtained I-9s for all employees hired after November 6, 1986; review I-9s to ensure they were completed correctly (including any necessary re-verification); engage in appropriate remediation efforts for missing and/or incorrectly completed I-9s; and implementing appropriate retention/destruction policies.

Spending the time to clean up your policies and practices *before* the government shows up can save a lot of headaches, not to mention time and money in the long run.

MEET THE TEAM



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