



ERISA DOCUMENT DELIVERY



DISTRIBUTE TO WHOM

- Plan Participants
- COBRA qualified beneficiaries
- The parent or guardian of a child under QMSCO
- A retiree who remains entitled to benefits
- Spouse or other dependent of a deceased employee

DISTRIBUTION TIMING

- New Plan Participant: Automatically within 90 days after a first becoming covered under the plan
- For New Plans: Within 120 days after the plan first becomes subject to ERISA
- Updated SPDs: Every 5 years - every 10 years for a plan that had no intervening changes

ERISA DISCLOSURE RULES

- The SPD must be furnished automatically in a manner “reasonably calculated to ensure actual receipt of the material” and must be delivered using one or more methods “likely to result in full distribution.”

DELIVERY METHODS

Paper Copy Delivery

You may provide covered individuals with a paper copy in a manner reasonably calculated to ensure receipt of the documents.

The information contained herein is for informational purposes only and does not constitute financial, accounting, actuarial, or legal advice as to any particular matter. The reader should consult with a legal or other professional advisor before commencing a course of action. Acting upon information herein does not create an attorney-client relationship.

06. 01. 16

Examples of paper copy delivery options:

- 1st Class Mail
- Payroll Stuffer
- Interoffice Mail
- Hand-delivery

ELECTRONIC DELIVERY

Examples of electronic delivery options:

- Email with SPD Attachment
- CD or DVD
- Hyperlink to Website or Company Intranet
- Magnetic Disc

TWO CATEGORIES OF RECIPIENTS

I. Participants with work-related computer access

Plan participants who have the ability to access SPDs electronically at their worksite location where

- The participant reasonably could be expected to perform employment duties, and
- Whose access to the electronic information system is an integral part of their job.

a. Electronic Delivery

Send each eligible individual an email (example below) and attach the SPD or insert a hyperlink or instructions for access.

SAMPLE EMAIL

RE: Important Information about Employer, LLC's Benefits

The Employer, LLC's Employee Health Benefits Summary Plan Description (SPD) which is here being furnished to you electronically, contains important information regarding the benefits provided to you (and if applicable, your family) under the Plan. This document also outlines your rights and responsibilities under the Plan. Please note that this document incorporates by reference any current applicable Certificates of Coverage and/or benefit summaries that you have or will receive from Employer, LLC or directly from Carrier.

Example option: The SPD is attached to this email.

Example option: Clicking on the below hyperlink to access Employer, LLC's employee website and view the SPD in its entirety:

Insert hyperlink

You have the right to request and obtain at no charge a paper version of the Employer, LLC's Employee Health Benefits SPD. To do so, contact the Human Resources Manager of Employer, LLC who acts on behalf of the Plan Administrator at 212-222-2222 or employer.com.

If you have any questions regarding the Employers, LLC's Employee Benefits SPD, or have problems accessing the document, please contact XX at 212-222-2222.

The information contained herein is for informational purposes only and does not constitute financial, accounting, actuarial, or legal advice as to any particular matter. The reader should consult with a legal or other professional advisor before commencing a course of action. Acting upon information herein does not create an attorney-client relationship.

06. 01. 16

Disclosing your ERISA SPD via another form of electronic media, e.g., on a magnetic disc, a CD, or DVD.
A notice similar in content to the sample email presented on page 2 should accompany the disc, CD, etc.

II. Participants with no-work related computer access, e.g., non-employees such as retirees or COBRA QBs.

- Affirmative consent required. Plan Sponsor must obtain written consent before sending the document electronically.
- If there are hardware/software changes, a new statement and affirmative consent is required. (A sample consent to receive electronic plan disclosures is below.)

PROVING DELIVERY

Plan administrators must be prepared to prove in individual cases that information was provided.

- Where mailing is used, there should be business records sufficient to show what was mailed to what address on what date, along with sufficient proof of the mailing itself.
- Proof of hand-delivery can be more of a challenge; the best proof will consist of records kept by responsible employees demonstrating that delivery was made in individual cases.
- Even in the absence of direct proof of delivery to the individual in question, a court may accept convincing evidence that the employer had an established policy requiring hand-delivery, which was communicated to responsible employees and was followed in actual practice. *Hussey v. Chase Manhattan Bank*, 418 F. Supp 2d 702, 35 EBC 2819 (E.D. Pa 2005).

TIPS

- It is important to confirm that the SPDs manner of delivery was aimed at ensuring receipt. It is useful to use the email system's "return receipt" or "undeliverable email" function, perform a periodic survey, or a review of employees to determine if they have received the documents.
- Employees who receive an electronic disclosure always have the right to request a paper copy of the SPD at any time.
- If ever challenged in regard to distribution of the SPD, a Plan Sponsor would have to show proof of reasonable distribution.

The information contained herein is for informational purposes only and does not constitute financial, accounting, actuarial, or legal advice as to any particular matter. The reader should consult with a legal or other professional advisor before commencing a course of action. Acting upon information herein does not create an attorney-client relationship.

06. 01. 16

SAMPLE LANGUAGE FOR PARTICIPANTS WITH NO WORK-RELATED COMPUTER ACCESS

DATE: AUGUST X , 2015

EMPLOYER, LLC

CONSENT TO RECEIVE ELECTRONIC PLAN DISCLOSURES

Individuals entitled to receive benefits under the Employer LLC, Employee Health Benefits Plan (the Plan) are also entitled to be furnished with certain documents required by ERISA. Employer LLC intends to provide the following documents (as described below) electronically to you by CD, Company Intranet, or email:

- The Summary Plan Description (SPD)
- Any required Summaries of Material Modifications (SMMs)
- The Summary Annual Report (SAR), if applicable
- Any documents required to be furnished under ERISA § 104(b)(4) on request by a Participant or beneficiary under the Plan or made available under ERISA § 104(b)(2).

WHAT YOU MUST DO:

To receive documents, you must complete and return the following Consent to Receive Employer LLC, Employee Health Benefits Plan Disclosures by _____ (insert CD, Company Intranet, email, etc.)

You may withdraw this consent by notifying Contact by sending an email message to contact@employer.com or via interoffice mail that indicates in the subject line:

Consent Withdrawn for _____ **(insert CD, Company Intranet, email, etc.)** and includes in the body your full name, address, and phone number. Provide us with an address to which paper documents should be sent.

YOUR RIGHT TO A PAPER COPY:

You have a right to request and obtain a paper version of any document at no charge. If a paper version is available, you will receive immediately or a paper copy will be sent to you via interoffice mail. You should contact NAME, who acts on behalf of the Plan administrator at 212-222-2222 or contact@employer.com to request a paper copy.

Consent to Receive Plan Disclosures by _____ (insert CD, Company Intranet, Email, etc.)

I have read and received the Statement Regarding Employer LLC's Employee Health Benefits Plan Disclosures (the Statement), which is set out above.

I consent to receiving the type of documents described in the Statement by _____ (CD, Company Intranet, email, etc.) I confirm that I have the ability to access information in the format that is described in the Statement. I understand that I will receive copies of the types of document described in the Statement only in the _____

(insert CD, Company Intranet, email, etc.) form described unless I exercise my right to affirmatively request a paper copy of such document. I understand that I can withdraw this consent at any time by sending an email message to contact@employer.com or interoffice request to Employer LLC that indicates the request in the subject line:

Re: Consent Withdrawn for Electronic Disclosure

Include: In the body my full name, address, and phone number

Employee Name

Date

Please return to:

Contact:

Employer:

Mailing or interoffice address:

Email address of contact:

Name

Employer LLC

88 Street Avenue, Town, NJ 00000

contact@employer.com

The information contained herein is for informational purposes only and does not constitute financial, accounting, actuarial, or legal advice as to any particular matter. The reader should consult with a legal or other professional advisor before commencing a course of action. Acting upon information herein does not create an attorney-client relationship.

06. 01. 16