

ATTENTION! Please read the following regarding electronic distribution of employee health benefit plan materials:

In light of all the Affordable Care Act disclosure requirements, and with the year-distributions required for retirement plans, employers seem to be thinking more and more about distributing benefit plan notices electronically. Perhaps companies want to post them on a company website or e-mail them to employees, but there is no question that mailing paper notices to employees becoming a less preferred option. Unfortunately though, it is the preferred method for plan communications from a regulatory perspective. ERISA does permit the electronic disclosure of certain plan communications under certain circumstances. But employers should be very careful.

Employers can distribute all manner of plan communications electronically, including SPDs, open enrollment materials, summaries of material modification, COBRA and HIPAA notices and even the summary of benefits coverage notice required by the ACA. But the rules for electronic distribution are different depending on whether employees have work-related computer access. The primary difference is the requirement of obtaining consent.

For employees with work-related access to a computer and the company intranet, a notice can be delivered electronically if (1) the plan administrator uses appropriate means to ensure actual receipt of the notice, (2) the notices meet all of the requirements required for the notice (such as timing of distribution and content) and, (3) the recipient is provided with an explanation of the significance of the notice and is given the opportunity to obtain a hard copy of the notice (and any fee, if applicable).

For employees without work-related computer access, an employer must get affirmative consent from the employee to receive notices electronically. The consent is only valid if, before obtaining the consent, the employer specifically identifies the documents that will be provided electronically and provides an ability to withdraw the consent at any time. From there, the notices must satisfy the three requirements for employees who have work access as listed above.

Another thing to consider is a recent survey conducted about benefits communications. It revealed that 29% of employees prefer direct communications with HR. Also, 19% said they prefer direct mail and only 17% said that prefer e-mail or website notices. This is not to say that electronic disclosures are not appropriate communications, but it does suggest that just sending notices via e-mail without some explanation of the purpose causes more confusion. Employers considering this option should be aware of the disclosure rules if they are going to distribute benefit notices electronically so that confusion is not compounded and compliance is assured.

Please contact your Customer Care representative with any questions. 1-800-310-6645

