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New DOL Safe Harbor Could Save Companies Billions

PUBLISHED ON
October 25, 2019

The U.S. Department of Labor's latest proposed safe harbor could save companies more than $2 billion through the next 10 years by allowing them to post items such as retirement plan disclosures online instead of mailing them to plan participants.

The proposed safe harbor would permit electronic disclosure - including Internet posting - for participants and their beneficiaries if they have a valid email address. Participants can choose to opt-out of receiving electronic information.

Although companies are not required to comply with the conditions of the safe harbor, compliance ensures that the DOL will deem the plan's electronic delivery as being consistent with the general duty to furnish documents by a method "reasonably calculated to ensure actual receipt." However, the proposed regulations only apply to retirement plan participants and do not apply to health and welfare plans, such as group health, disability and life insurance plans.

According to a fact sheet from the DOL, if the proposed rule is approved, it could save businesses $2.4 billion over the next 10 years by eliminating materials, printing and mailing costs associated with providing printed disclosures.

The existing safe harbor standard for electronic disclosure of the Employee Retirement Income Security Act (ERISA) documents, such as a summary plan description, is more restrictive and applies to both retirement plans and health and welfare plans. The current safe harbor rules generally provide that the electronic disclosure of ERISA documents only constitute sufficient disclosure if your workforce has regular access to electronic information as an integral part of their job.

However, even for these so-called connected individuals, it still is necessary to get their consent to the electronic delivery of information. The current safe harbor also permits electronic disclosure for employees without regular access to the employer's computer system, but they must individually provide an address for delivery of the documents and consent to the electronic disclosure.

The proposed regulations offer some much-needed relief from the current rules, at least for ERISA-required retirement plan communications, It will no longer be necessary to determine whether an employee is considered to have access to the employer's computer system as an integral part of their job or to seek their consent. It will also not be necessary to take additional steps for those individuals who are not connected to the employer's computer system.

For businesses that typically provide an email address to your employees, they will automatically be considered eligible to receive the electronic delivery of ERISA documents. You only need to furnish a notice using the employee's electronic address regarding the electronic posting of each ERISA document. This notice will also need to describe the nature and importance of the document along with the web address where the document is available. You must also include a statement to the effect that they have a right to opt out of the electronic delivery and/or request a paper version.

Public comment on the proposed rule will run through November 22. The safe harbor rules will become effective once the final rules are published, though there is no clear indication for when the rules will become finalized.

If you have questions about these developments or other matters involving employer-provided health coverage, please reach out to me or another member of the firm's Employee Benefits Practice Group.

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