

# ERISA COMPLIANCE: Form 5500 Filing

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## Filing Requirements for Employee Health and Welfare Benefit Plans



Plans with more than 100 participants on the first day of the plan year must file a Form 5500 and associated schedules with the Department of Labor (DOL) each year for their health and welfare plans. Such health and welfare benefit plans may include: health, dental, vision, life insurance, short-

term and long-term disability and health FSA plans. An employer will have to evaluate each employee welfare benefit in order to determine whether it is covered under ERISA.

There are some exceptions to the Form 5500 filing requirement, a few of which are listed below:

1. If a plan has less than 100 plan participants, it is not required to file and this includes plans that are “unfunded, fully insured or a combination of insured and unfunded”. An “unfunded” plan is one in which benefits are paid solely from the general assets of the employer. For instance, a self-insured plan where benefits are paid directly from the assets of the plan sponsor is an unfunded plan. “Funded” means that the plan benefits are fully insured, including paid from a trust.
2. Health and welfare plans sponsored by a governmental employer or by a church.

## Who is Considered a Participant?

- **Active participants** – those currently employed and covered by the plan.
- **Participants retired or separated from service receiving benefits** – includes former employees receiving group health continuation coverage (COBRA).
- **Other participants retired or separated from service and entitled to future benefits** – employees who have separated from service and are entitled to benefits in the future.
- **Deceased participants whose beneficiaries are receiving or entitled to receive benefits** – beneficiaries of former employees that are receiving or entitled to receive benefits.

It is important to note, **dependents are not considered participants**. In addition, unlike retirement plans, the term participant for employee welfare benefit plans includes only those actually covered under the plan, not all those that are eligible to be covered.



## Is a Form 5500 Due for Each Benefit Offered to Employees?

If benefits are not contained within a single plan Form 5500 should be filed in accordance with the plan year.

A Form 5500 must be filed for each benefit plan with more than 100 participants on the first day of the plan year. It should be noted that the plan year and the policy year for benefits provided under insurance contracts are not necessarily the same. Employers can use a “wrap” document to pull all employee benefits into a single plan in order to reduce the number of Form 5500 filings required. The wrap document does not take the place of other plan documents (such as the cafeteria plan document), it simply wraps all of the other documents into one plan allowing all benefits to be reported within a single Form 5500 filing.

A Form 5500 filed for a wrap plan must include all benefits under the plan. Even those with less than 100 participants on the first day of the plan year are to be reported on the Form 5500 since all benefits are considered one plan.

### Delinquent Filing

#### How to Correct a Failure to File?

It is not uncommon for employers to realize that a Form 5500 was due on their employee welfare benefit plan until after the filing deadline has passed, sometimes even several years after the filings were due. The DOL has a program that allows employers to bring their filings up to date.

The DOL's Delinquent Filer Voluntary Compliance Program (DFVC) encourages voluntary compliance with the annual reporting requirements and gives plan administrators the opportunity to avoid potentially higher civil penalties by paying a reduced penalty amount and bringing the plan into compliance with past filings. DFVC provides for a penalty of \$10 per day past the filing deadline up to a maximum of \$2,000 per year and a maximum penalty capped at \$4,000 per plan regardless of the number of years filed at one time under the program.

Despite the DFVC penalties, it is a better and less expensive than the alternative - waiting for the DOL to send a notice regarding a failure to file. If an employer fails to file, the penalties can be cumulative if you receive a notice from the DOL or, become subject to a DOL audit. Penalties accrue separately on each Form 5500 due.

If you are filing a 5500 for a large retirement plan and not for your Health and Welfare Benefit program(s) this may be scrutinized by either the DOL or IRS.

*Note: This review is being provided as “general information only” and is not intended to be a detailed overview of Form 5500 filing requirements. It is recommended that employers and others seek legal and/or BASIC's expertise to assess your organization's reporting requirements.*

