

Form 5500 Filing for Health and Welfare Plans

Frequently Asked Questions

Am I required to file a Form 5500 for my health and welfare benefit plans?

Yes. Administrators of ERISA employee benefit plans are required to file an annual Form 5500 or 5500-SF unless a reporting exemption applies. There is a popular misconception that the 5500 filing requirement is applicable only to pension plans, however, it applies with equal force to virtually every type of welfare plan, including, without limitation, medical, dental, life insurance, disability, and in some cases even voluntary plans.

Which welfare plans are required to file a Form 5500 or 5500-SF?

Must file:

- Large funded plans
- Large unfunded plans
- Large insured plans
- Large combination unfunded/insured plans
- Small funded plans

Exempt from filing:

- Small unfunded plans
- Plans not subject to ERISA

Exempt if certain conditions met:

- Small insured plans
- Small combination unfunded/insured plans

What is a Large/Small Plan?

Large plans are those with 100 or more covered participants at the beginning of the plan year. Small plans have less than 100 covered participants at the beginning of the plan year.

Who are covered participants?

Under ERISA, a "participant" is "any employee or former employee of an employer who is or may become eligible to receive a benefit ... or whose beneficiaries may be eligible to receive any such benefit." Therefore, non-employees such as covered spouses and dependent children are not counted. All former employees who are COBRA qualified beneficiaries, however, are counted.

What is an unfunded plan?

Unfunded plans are those where benefits are paid solely from the general employer assets and not from plan assets or insurance in whole or in part. Participant contributions (except if accepted through a cafeteria plan) are plan assets under DOL regulations.

What is an insured plan?

Insured plans are those where benefits are paid solely through insurance policies. Premiums must be paid directly by the employer from its general assets. Alternatively, premiums may be paid partly from an employer's general assets and partly by participant contributions, which the employer forwards no later than three months after receipt.

What are the conditions required for exemption of small insured and small combination unfunded/insured plans?

- Benefits must be paid exclusively through insurance policies issued by qualified insurance companies or similar organizations or through qualified health maintenance organizations.
- Premiums must be paid directly by the employer from general assets or partly from participant contributions, provided that the participant contributions are forwarded to the insurer or HMO as soon as possible but no later than three months after being withheld or contributed.
- Insurance refunds to which contributing participants are entitled must be refunded within three months.
- Participants must be informed, when they enter the plan, about the plan's provisions for allocating refunds.

Failure to meet any of the above conditions, including the notice provision regarding refunds, will result in an obligation to file the Form 5500.

What is the deadline for filing Form 5500 or 5500-SF?

Form 5500 or 5500-SF must generally be filed by the last day of the seventh month

following the end of the plan year, unless an extension applies.

What are the penalties for not complying with the Form 5500 or 5500-SF requirements?

The DOL may assess a civil penalty against a plan administrator of up to \$1,100 per day starting from the date of the administrator's failure or refusal to file the Form 5500. Currently, the DOL enforces the following penalties:

Late Filers - Plan administrators filing a late annual report (i.e., after the date the report was required to be filed, including extensions) may be assessed \$50 per day, with no limit, for the period they failed to file, determined without regard to any extensions for filing.

Non-Filers - Plan administrators who fail to file an annual report may be assessed a penalty of \$300 per day, up to \$30,000 per year, until a complete annual report is filed.

What is the Delinquent Filer Voluntary Compliance (DFVC) program?

The DFVCP was created by the DOL to encourage employee benefit plan administrators to voluntarily file overdue annual reports and pay reduced civil penalties. Plan administrators are eligible to use the DFVCP only if they make the required filings prior to being notified in writing by the DOL of a failure to file a timely annual report.

Questions?

For questions regarding the Form 5500 filing requirements, including extensions and the DFVCP, please contact Gregory Feigenbaum of Long Island Employee Benefits Group Ltd. at 631.273.9220 x129 or Gregf@liebg.com.

