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Time for a Physical

The New Year is a great time for employers to evaluate and consider plan issues that may not be at the forefront. Although complacency is natural, failure to address key matters often fosters problems or exacerbates existing problems.

The list below notes some of the matters that plan sponsors should consider. This applies to all plans, be they 401(k), ESOP, or other qualified plans, health, welfare or flex plans, severance plans, or deferred compensation arrangements.

Although the list is not exhaustive, it represents several of the problems we encounter on a daily basis.

1. Is the plan's design achieving *your* goals? For example, are participants able to contribute (or have the employer contribute) as much as they desire, is the plan failing the "ADP" or other IRS tests, thus returning (or not making) contributions to certain employees?
2. Are you appropriately documenting your fiduciary processes *and* decisions?
3. Do you know your legal fiduciary responsibilities (and your exposure)?
4. Are plan operations *strictly* consistent with the plan terms? For example, are the plan's eligibility and allocation provisions correctly applied? Is the plan cashing out small balances on time? Are only those distributions permitted by the plan made?
5. Do your Form 5500s accurately report plan matters or do they contain errors that will invite governmental inquiry (such as incorrectly coding plan features or benefits)? Are Form 5500s timely filed? Has an expert carefully checked the preparer's forms? Are you obtaining the appropriate confirmation of each filing?

6. Is the testing data accurate, thus leading to accurate eligibility, allocation, vesting and testing results? Have the tests periodically been reviewed by counsel?

7. Is the correct compensation, as defined in the plan, used to calculate employee and employer contributions?

8. Are plan failures corrected and documented in accordance with the applicable Internal Revenue Service and Department of Labor guidance? In this regard, the Employee Plans Compliance Resolution System ("EPCRS") was just updated in Revenue Procedure 2013-12.

9. Was compliance with the new service provider *and* participant level fee disclosure regulations achieved? Were both processes documented to evidence compliance? Is a process in place to ensure 2013 and ongoing compliance and required adjustments?

In conclusion, when weighing the relative ease of correctly handling these matters up front versus the difficulties, risks, and costs of remedial action, the advisability of occasional independent checkups speaks for itself.

For additional information about a plan diagnosis, or if you have questions, contact Jeffery Mandell (jeff@erisalawgroup.com) or John Hughes (john@erisalawgroup.com) at 208-342-5522 or 866-ERISALAW.

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