Policy Review: Plan Operations to Insurance

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70TH ANNUAL **EMPLOYEE BENEFITS** CONFERENCE

International Foundation *if*
OF EMPLOYEE BENEFIT PLANS

Introduction

Agenda

- Defining Types and the Importance of a Policy
- Drafting Implementing and Monitoring
- Relationship of Policy to the Governing Documents
- Connecting Policy with Procedure
- Required Policies and by Whom?
- Best Practices or Common Policies
- Key Takeaways

Defining Types and the Importance of a Policy

- What is a policy?
  - A written document that sets forth guidelines, a course of action, or protocol
    - May be adopted by the Trustees of multiemployer plan
    - Generally, used to supplement the governing documents (described later)

Defining Types and the Importance of a Policy

- **What are the types of policies?**
  - Administrative
    - In the context of multiemployer plans, these usually set out guidelines or protocol that relate to governance of the multiemployer plan
      - Example: Investment policy
  - Business
    - Rules, guidelines, or protocol that govern how an organization's employees make decisions and behave
      - Example: Telework policy

Defining Types and the Importance of a Policy

- Why are policies needed?
  - Multiemployer plans are highly regulated
  - ERISA requirements
    - Must be governed by a written plan document and a written trust document
      - Often referred to as "governing documents"

Defining Types and the Importance of a Policy

- What are the governing documents?
  - Plan Document
    - Generally, the legal document that sets forth the operation and administration of an ERISA plan
      - Note that ERISA plans are required to provide participants with a Summary Plan Description
        - » Often combined with plan document for health and welfare plans
  - Trust Document
    - Generally, a legal document that establishes the responsibilities of the Trustees of an ERISA plan

Defining Types and the Importance of a Policy

- Why are policies important?
  - ERISA provides that Trustees have a fiduciary duty to:
    - Act in the best interest of participants and beneficiaries
    - Use plan assets to provide benefits and pay reasonable plan expenses
    - Act prudently
    - Diversify investments
    - Follow plan documents
    - Avoid conflicts of interest.

Defining Types and the Importance of a Policy

- Why are policies needed?
  - Policies are needed to address guidelines, a course of action, or protocol not described in the plan document, trust document, or other "governing documents"
    - Provide direction in plan administration
    - Often used to fill in gaps
    - Documents Trustees' practices for carrying out fiduciary obligations
      - Example: Policies that ensure plan expenses are reasonable

Defining Types and the Importance of a Policy

- Policies can also:
  - Address matters that fiduciaries do not want to include in the governing documents
    - Policies can be drafted to provide some flexibility
  - Create consistent administration and operation
  - Address legal requirements that are not required to be in the plan document or trust document
  - Create continuity and preserve institutional knowledge.

Defining Types and the Importance of a Policy

- Absolute vs. discretionary guidance?
  - Policies can be drafted to give specific guidance in a particular situation
    - Example: Trustees *must*...
  - Policies can be drafted to provide general direction in a particular situation while remaining flexible
    - Example: Trustees *should*...

Drafting Policies—Where to Start?

- Determining the need for a policy and getting started
  - Prioritize your policy list
    - Is it required or considered best practice?
  - Conduct research and create initial draft
    - Existing polices, new or changes in law, compliance or government regs
    - Policy may go through several revisions, rely on all parties to review
  - Leadership approval

Drafting Policies—Where to Start?

- Policy drafting sources
  - DOL model forms
  - Plan vendors
  - IFEBP library

Drafting Policies—What to Consider?

- Is a policy required?
  - If you have a policy, follow it
- Team approach
  - Approval and guidance from Trustees
  - Legal
  - Administrative
  - Consultant
  - Other Service Providers

Drafting Policies—What to Consider?

- Is a policy a direct extension of the governing documents?
  - NO but should be relatable if read alongside governing documents
  - Use similar language/terminology to the governing documents?

Drafting Policies—Administrative Considerations

- Policy should be clear for administrative purposes
  - Should clearly state:
    - Why it exists and who it impacts
    - How it applies to certain circumstances
    - How it should be executed

Drafting Policies— Administrative Considerations

- Does the policy establish a rule for administrative purposes?
  - If so, the policy should build in some flexibility/discretion
    - Important to clearly state when discretion is appropriate
  - Exceptions to flexibility/discretion are any legal requirements
- Communicating policies effectively

Drafting Policies—Monitoring and Updating

- Monitoring—Equally as important to establishing the policy
  - Measure the impact of policy and expected outcomes, goals
  - Lean on administrative staff for practical knowledge
- Successful policy monitoring
  - Determine a policy review schedule
  - Design means of reporting and improvement

Drafting Policies— Monitoring and Updating

- Do policies require updating?
  - Administrative challenges
  - Legal requirements
  - Market conditions
  - Policies should grow and change as needed, goal is <u>INFREQUENT</u>

Relationship Between a Policy and Governing Documents

- How does a policy intersect with governing documents?

  - Reminder: The governing documents are the trust document and the plan document

  - Policies can:

    - Address matters not discussed in the governing documents
    - Address general responsibilities of the Trustees.

Relationship Between a Policy and Governing Documents *(continued)*

- How does a policy intersect with governing documents?

  – Policies should:

    • Help with administration

    • Create consistent practices and procedures

    • Permit some flexibility (Reminder: absolute vs. discretionary)

Is It Policy or Procedure?

- Policy and procedure are both foundational for all entities
    - Are they both required?
    - Which comes first, policy or procedure?
    - Can you have one without the other?
    - Are policy and procedure able to be combined?
        - Each have specific purpose

Is It Policy or Procedure?

- Well written policy and procedure ensure efficiency
  - Protect organizations from non-compliance
  - May also help define and shape culture

Is It Policy or Procedure?

- **Reinforce Marcy's definition of policy**
- A good policy is more than a rule
  - Provides the WHY, should include background information
  - **Guide** the day-to-day action and strategies, allow for flexibility

Is It Policy or Procedure?

- A good policy is more than a rule
  - Should set the standard and influence decision making
  - Utilizes clear, concise and simple language
  - Creates consistency throughout staff/organization
  - Improve internal process

Is It Policy or Procedure?

- Collaborative effort
- Make sure policy is ALWAYS available to staff
  - Provides reference as needed

Is It Policy or Procedure?

- A good procedure is a guideline
  to implement policy
  - Provides the HOW, what actions to take
  - Describe **step by step** actions, guidelines
    on completing specific tasks
  - May include who will do what,
    which forms/documents to utilize
  - Strictly followed to achieve desired outcomes

Is It Policy or Procedure?

- <u>Also</u> a collaborative effort
- Make sure procedure is <u>also</u> ALWAYS available to staff
  - Should contain a beginning and end
  - May be updated much more frequently than policy
  - Provides reference as needed

Key Differences—Policy or Procedure

Policy	Procedure
What and Why	How, When and Who
Creates a Standard	Describes a Process
Guideline	Detailed Steps
Infrequent Changes	Prone to Change

Policies Your Plan/Organization May Have

- Missing Participant Policy
- Record Retention Policy
- Whistleblower Policy
- Trustee Expense Reimbursement Policy
- Conflict of Interest Policy
- Policy on Acceptance of Donations/Gifts
- Audit, Collections and Delinquency Policy

- QDRO Policy
- QMSCO Policy
- HIPAA Policy
- Investment Policy
- Funding Policy
- Executive Compensation Policy
- Policy on Review of Government Filings
- Rehabilitation Policy/ Funding Improvement Policy

Required by Federal Statute   Requested by Form 990   Commonly Requested by DOL

Required Polices and by Whom?

- Required by statute
  - Record Retention
  - HIPAA
  - QDRO
  - Rehabilitation/Funding Improvement

Required Polices and by Whom?

- Required by Form 990
  - Record retention
  - Whistleblower
  - Conflicts of Interest
  - Acceptance of Donations/Gifts
  - Executive Compensation
  - Review of Government Filings

Best Practices/Common Policies

- Often requested during a DOL investigation
  - Some policies listed under federal statute (slide 31)
  - Investment policy
  - Trustee expense reimbursement policy
  - Missing participant policy
  - Cybersecurity policy

Often Requested by DOL—Investment Policy

- Purpose—Provides parameters for investing plan assets, identifying objectives, risk tolerance, portfolio constraints and criteria for management/monitoring
  - Objectives, roles and responsibilities
  - Permissible and non-permissible asset classes
  - Diversification objectives
  - Ranges for each investment type

Often Requested by DOL— Investment Policy *(continued)*

- Purpose
  - Expected rates of return
  - Criteria for evaluating investment manager
  - Proxy Voting

- Copy should be provided to all investment managers

Often Requested by DOL— Trustee Expense Reimbursement Policy

- Purpose—Provides parameters for reimbursing Trustee expenses from plan assets and ensures that expenses are reasonable

    – Expenses must be necessary and reasonable

    – What is commonly charged in the industry for similar items or services?

    – Excessive or extravagant expenses are generally not reimbursable

Often Requested by DOL— Trustee Expense Reimbursement Policy

- DOL is very interested in Trustee expense reimbursements when investigating multiemployer plans

  - Important to follow the policy as written

    - Is it absolute or does it give discretion?
    - If absolute, DOL will expect the policy to be followed exactly as written
    - DOL might have a different opinion on what's reasonable

Often Requested by DOL— Trustee Expense Reimbursement Policy

- Trustee Reimbursement Policies:
  - Specify some threshold as to what is reasonable or will be reimbursed
  - Describe the procedures for submitting and processing expenses for reimbursement
  - Cannot provide reimbursement for lost time for Trustees receiving full-time compensation from a union, employer, or employer association

Often Requested by DOL— Missing Participant Policy

- Purpose: To memorialize the steps to be taken to locate missing participants

  - Enforcement priority for DOL

  - Trustees have a fiduciary duty to act in the best interest of participants and beneficiaries

  - Must make reasonable efforts to locate missing participants and ensure that they receive any benefits they are entitled to

Often Requested by DOL— Missing Participant Policy

- Failure to take action could be considered a fiduciary breach

- DOL best practices

  - Maintain accurate census information

  - Implement effective communication strategies

  - Conduct missing participant searches

  - Document procedures and actions

Often Requested by DOL—Collection/Delinquency Policy

- Purpose—Provides for guidance in collecting contributions, identifying responsibility, issuing notices, calculations for liquidated damages/ interest, referring to legal, payroll audit and handling under/overpayments.

    – Role/responsibility of administrative staff and collection committee

Often Requested by DOL— Collection/Delinquency Policy *(continued)*

- Purpose
  - Identify when contributions are due and when considered delinquent
  - Determine when notices should be sent to employers and/or participants
  - At what point is a matter referred to legal counsel

Often Requested by DOL—Collection/Delinquency Policy *(continued)*

- Purpose
  - Developing and maintaining an adequate payroll audit program
  - Ensuring sufficient security for potential delinquencies—Employer bonding

- Understand duty of ERISA fiduciaries to collect delinquent contributions

Often Requested by DOL— Cybersecurity Policy

- Purpose: To protect plan assets and sensitive plan information from cybersecurity threats
  - Enforcement priority for DOL
  - DOL cybersecurity guidance issued in August of 2021
    - Rereleased in September of 2024 to clarify that the guidance applies to retirement plans AND health and welfare plans
    - DOL has been actively investigating the cybersecurity practices of all ERISA plans since the 2021 guidance

Often Requested by DOL—Cybersecurity Policy

- DOL's cybersecurity guidance covers:
  - Best practices
    - Documented cybersecurity program
    - Risk assessments
    - Training
  - Online security tips
  - Tips for hiring service providers.

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Common Insurance Policies

- Fidelity bond (required)
- Fiduciary liability insurance
- Cybersecurity insurance
- Stop-loss insurance
- Other business insurance

Key Takeaways

- Know the importance of policies and their impact on plan operations
- Take a collaborative approach, including senior leadership
- Identify which policies you currently have and those needed
- Policies are not set it and forget it type of documents
- Consider the relationship of policies to the governing documents
- Policies should co-exist with procedures, WHY vs. HOW
- Develop means to efficiently communicate policies to staff
- Stay informed of required updates, lean on plan professionals

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Session Evaluation

Questions?