

Policy Review: Plan Operations to Insurance

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International Foundation
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 policies, 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 INFREQUENT

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?

- Also a collaborative effort
- Make sure procedure is also 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 Policies and by Whom?

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

Required Policies 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.

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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Questions?