

Welfare Plans: Traps For the Unwary

Most employers offer some type of welfare benefit plan to their employees. Welfare plans include, but are not limited to:

- Medical Plans
- Dental Plans
- Vision Plans
- Cafeteria Plans
- Flexible Spending Accounts
- Disability Plans
- Life Insurance Plans

Because welfare plans are not required to receive approval from the Internal Revenue Service, many employers believe that their compliance obligations with respect to welfare plans are more limited. **This is not the case.** Here are just a few of the common misperceptions that employers have with respect to welfare plans:

- **My company maintains all fully-insured benefits, and therefore does not have any additional compliance obligations**
 - False! While the insurance company retains some responsibility, the employer, as plan sponsor, is still responsible for a number of obligations with respect to the plan.
- **Insurance certificates of coverage function as plan documents or summary plan descriptions.**
 - False! Generally, insurance certificates of coverage do little more than describe the eligibility class and the available benefits. They usually do not contain all of the provisions required by ERISA to be present in summary plan descriptions
- **My company uses the “model notices” included in the applicable regulations, and is therefore protected from all liability.**
 - False! The model notices are required to be modified to conform with the applicable provisions of the plan as well as the employer’s administrative practices. Additionally, some courts have found that the terms of the “model notices” do not adequately meet some of ERISA’s explicit disclosure requirements.
- **We use a third party administrator to protect the sponsoring company from liability.**
 - Unfortunately, a plan sponsor cannot assign all responsibility to a third party administrator. Therefore, it is crucial to carefully review and negotiate third party administrator agreements, and understand the employer’s responsibilities under those agreements.