Before Cleaning Out Files, Brush Up on Record Retention Requirements

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Our world is filled with paper and electronic records, and the HR departments at most companies are no exception. Enrollment forms, notices, plan documents, summary plan descriptions, benefit statements, and service records are just a few of the records that fill the HR department's file cabinets and computer storage. While it might be tempting to clean out files, plan sponsors should exercise care before disposing of any files relating to benefits under a plan. A clean desk today could create headaches tomorrow. Generally, ERISA requires an employer to retain plan records to support plan filings, including the annual Form 5500, for at least six years from the filing date (ERISA 107) and to maintain records for each employee sufficient to determine the benefits due or that may become due to such employee (ERISA 209), with no time limit on such requirement. In addition, HIPAA requires retention of the policies and procedures implemented to comply with HIPAA (and records relating to compliance activities) for six years from the date the document was created. Further, even absent a regulatory requirement to retain a record, a plan sponsor could face litigation exposure if it has not retained the records necessary to show that an individual was not entitled to a particular benefit. To minimize risks, plan sponsors should:

1. Identify what documents are needed to determine plan benefits (including, without limitation, prior and current versions of plan documents and summary plan descriptions, participant communications, enrollment materials, hardship distribution paperwork, plan loan documents, beneficiary designation forms, insurance policies, service provider contractors, dates of hire and termination, committee charters and minutes, contribution amounts and testing results);

2. Determine whether any of the documents needed to calculate plan benefits are held by third parties, such as third-party administrators and consultants, and review the document retention policies of such third parties to ensure they are sufficient; and

3. Review the plan sponsor's record retention policy to ensure that it requires retention of records for a period that provides sufficient protection to the plan sponsor for any claims to benefits by participants (or, if the plan sponsor does not have a policy, adopt a written policy establishing plan record retention requirements).

Any policies or procedures relating to record retention should also be reviewed by counsel to ensure compliance with the applicable legal requirements as well as corporate best practices. When in doubt, it is better to retain excess paperwork than to risk being unable to establish that the decision to pay or deny a benefit to a participant was correct.

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