Employers: Did You File Your Top Hat Plan Statement?

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Sponsors of nonqualified deferred compensation plans (often referred to as “top hat” plans) like such plans because they can provide additional benefits without being subject to many of the requirements of ERISA, including, without limitation, the rules regarding holding assets in a trust, vesting, and nondiscrimination requirements. However, these plans must satisfy one key administrative requirement in order to be exempt from many of the ERISA requirements, including those mentioned above. Namely, each plan must file a top hat plan statement with the DOL within 120 days of the plan’s effective date. The filing ensures that the plan is exempt from ERISA’s reporting and disclosure requirements and won’t be subject to any government penalties arising from such reporting and disclosure requirements. If an employer has not timely filed a top hat plan statement within the 120-day period following the effective date of a top hat plan, it can correct this failure by working with its outside counsel and submitting a filing through the DOL’s Delinquent Filer Voluntary Compliance Program.

To confirm you have filed your top hat plan statement, you may use the DOL’s “Search Top Hat Plan Statements” here.

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