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This Is Going On Your Permanent Record

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We've all heard it; we've all been there. "I don't know where I put it, but I'm sure I can get a copy from [fill in the blank]" followed by a mad flurry of emails and phone calls to past service providers, who may or may not have the information you need. Or, be willing to part with it without a hefty fee. Can you point out in past or present service agreements the clause that says the service provider would maintain plan records, forever and ever, amen?

When an auditor comes knocking, or the ghosts of employees past show up with their attorneys, the buck stops with the plan sponsor; it doesn't matter which way and in how many directions fingers start pointing. That is why it is critical to have a solid plan record retention policy in place.

Smaller businesses don't generally have the resources to maintain a whole department (or even a single, full-time staff member) to dedicate to their retirement plan. So when it comes to the details that seem like minutia, business owners and their HR professionals can see their plans as just more paperwork. We, on the other hand, are in the business of producing reports with test results, running calculations and helping maintain plan compliance. We know those tests and numbers don't mean much to the business owners; they just need to say "Pass." And that's okay – as long as those employers have a system in place to store, organize

and maintain all that paperwork showing not only the tests but also the details behind them.

It's not just the annual compliance reports that need to be maintained, however. The law requires that plan sponsors maintain all records that confirm the plan has been run properly, document all information reported on the annual Form 5500 filings and support the benefits provided to all plan participants and beneficiaries. This includes employment history, payroll records (both of which should generally be retained for other business purposes) as well as plan financial statements from recordkeepers and custodians.

Of equal importance are plan documents. Specifically, signed copies of all plan documents, amendments, resolutions, etc. should be retained with other plan records and be readily available. After all, one of the first things an auditor usually requests is a complete set of timely executed plan documents. ***Remember, if it isn't signed, it hasn't been legally adopted.***

So what records must a plan sponsor keep to prove the plan is being properly run and the correct benefits given to participants?

Essentially, almost everything but the proverbial kitchen sink. Here is a partial list.



This Is Going On Your Permanent Record continued

1. Basic plan information, including:

- Properly executed plan document(s), amendments, and/or restatements, including company resolutions adopting each;
 - Any draft copies that are kept should be clearly labeled as such.
- Minutes of company meetings discussing adoption or amendment of plan details (including the reasons for such changes);
 - Pertinent notes regarding decisions to implement or change plan provisions can be helpful if changes are questioned.
- Timing and details of statutory/regulatory changes operationally implemented prior to being memorialized via an amendment or restatement of the plan document;
- Participant communications, including summary plan descriptions, summaries of material modifications, educational materials, required notices, etc.; and
- IRS Determination, advisory, or opinion letter(s) for all plan document(s).

2. Employee/participant information, including:

- Personal details, including name, social security number, date of birth and marital/family status;
- Employment history, including hire, termination, and rehire dates (as applicable), and termination details (e.g. voluntary or involuntary discharge, death, or disability);
- Compensation and hours history used to determine eligibility and calculate contributions;
- Officer and ownership history and familial relations;

- Details of employee exclusion or employee opt-out elections;
- Election forms for choices such as deferral amount, investment direction, beneficiary designation, and distribution request; and
- Transactional history of contributions and distributions.

3. Financial reports, including:

- Statements from the trust, custodian, brokerage accounts, and/or bank accounts which reflect deposits, withdrawals, income, fees, and other transactional activity;
- Documentation that such accounts are properly maintained as plan accounts (not company or personal);
- Certified audits and/or appraisals depending on plan size and type of assets held;
- Distribution records including withholding and Forms 1099-R; and
- Reconciliation of deposits to deductions taken on company tax returns.

4. Proof of the fidelity bond covering the plan.

The regulations specify minimum time frames to keep some of this information available. But other pieces are considered “indefinite” keepers. For example, all documentation supporting the information reported on Form 5500 must be retained for 6 years from the date the form is filed. That means that a calendar year plan that files its Form 5500 for the 2013 plan year on the latest possible date (October 15, 2014) must keep supporting records on hand until at least October 15, 2020. Plan documents, on the other hand, should be part of the employer’s permanent record.

As unwieldy as this may seem, a record retention policy does not necessarily have to be complicated. Most of the information we send and receive these days is electronic, and electronic records are much easier and cheaper to maintain.

Of course, not all records may be electronically stored. While electronic copies may serve as back-up records, sponsors must maintain originals of documents that cannot be converted to legible and accurate electronic form, or if the physical copy has significant value (e.g. legal documents with seals or notary stamps). It is also important to review storage media from time-to-time to ensure it keeps pace with the rapid evolution of technology. It wasn't that long ago when CDs were considered the newest and safest backup media. Now, many new computers do not even come with a CD drive at all.

While it might seem long-term record-retention only accomplishes cluttering your file cabinets (real or virtual) with information that is not “your business,” consider this: it is much easier to create a system or a habit to organize and maintain proper records than it is to spend even more hours hunting for information while under pressure from a government auditor or a plaintiff's attorney.

Guidelines for Electronic Storage

While electronic storage can seem like a simpler solution, there are a few important points to keep in mind when verifying that electronic records are compliant. An electronic system must:

- Be maintained with controls in place to ensure accuracy and authenticity of the records;
- Be able to index, retain, preserve, retrieve, and reproduce the records in a safe and accessible place;
- Be able to convert the records to legible paper form;
- Not impose access restrictions (e.g. time or location) that would impair an individual's ability to comply with reporting and disclosure requirements of ERISA; and
- Be adequately secured, organized, backed-up and maintained by established procedures.

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