



# Debunking SPD Myths, Part 1: *The SPD Basics, and (Almost) Every Plan Sponsor Needs One*

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# **DEBUNKING SPD MYTHS, PART 1: THE SPD BASICS, AND (ALMOST) EVERY PLAN SPONSOR NEEDS ONE**

*Written by [Eric Gregory](#) – 3/27/19*

Most employers that sponsor retirement, health, or other welfare plans are familiar with the requirement to provide a summary plan description (“SPD”) to their employees. With that being said, we frequently run into a number of common misconceptions or gaps in understanding with respect to various SPD requirements.

The All Things HR Blog is beginning a multi-part series on SPD compliance that will shed some light on these misconceptions, and provide some practical advice for employers on how to efficiently and effectively comply with the SPD requirements. We start with some basics that every employer should know, and debunk one of the most common SPD myths: the myth that small employers do not need an SPD.

## **Basic SPD Requirements**

SPDs must be furnished to participants and beneficiaries receiving benefits under a plan. Basically, the SPD must provide a plain English description of the most important terms of the plan. This requirement applies to retirement plans as well as welfare plans (e.g., health, dental, vision, disability, life, FSAs, HRAs, severance, and EAPs).

## **When and How Often SPDs Must be Delivered**

SPDs must be distributed to participants within 90 days after a participant becomes covered by a plan or first receives plan benefits, or within 120 days of a new plan being established. An updated SPD must be furnished to all participants every five years if there have been changes to the information that must be provided in an SPD, and every ten years even if the plan has not been amended.

## **What Are SMMs?**

If a plan document is changed, participants must generally be informed of that change either through a revised SPD, or through a separate document called a summary of material modifications ("SMM") that must be distributed to participants. A modification is considered "material" if it includes an amendment that establishes new benefits, takes away existing benefits, results in a change in trustees, narrows the circumstances under which benefits are paid, or terminates the plan. Some technical or administrative modifications are not considered to be material, for instance, courts have held that an amendment that merely clarifies plan language was not considered to be material.

SMMs must be provided within 210 days after the end of the plan year in which the material modification was adopted.

The Affordable Care Act ("ACA") expanded the disclosure requirements applicable to group health plans, by adding a requirement to provide a short, easy to read summary of

benefits and coverage (“SBC”). Under the ACA, if a change is made to a group health plan that would have to be disclosed on an SBC that was not reflected in the most recent SBC, an SMM (or updated SBC) must be provided at least sixty days *prior* to the date on which the material modification becomes effective.

### **Myth: Small Employers are Exempt from SPD Requirements**

There is no small employer exception for the SPD requirement. Some employers may be confused by two other requirements that depend on the number of full-time employees or number of participants: the Affordable Care Act’s “play-or-pay” requirements or the Form 5500 reporting requirement. Even employers exempt from these requirements must have an SPD.

With that being said, certain plans (irrespective of employer size) have been carved out from the SPD requirement. These plans include employer provided day care centers, most nonqualified deferred compensation plans (if a DOL notice requirement is satisfied), most governmental and church plans, and cafeteria plans (however, the health coverage, health flexible spending arrangement, or group term life insurance components of a cafeteria plan are subject to SPD requirements).

### **Conclusion**

Understanding the basics of SPD compliance is critical for every employer that sponsors a retirement, health, or other welfare

plan. Employers that fail to provide an SPD to a participant upon request may be subject to a \$110 per day penalty per participant or beneficiary. Compliance is not particularly difficult, but does require a level of attention and organization. Further, SPDs are the front-line document that tells participants what each plan provides and how it operates. A good SPD helps participants to better understand the important benefits that employers are providing, and will lead to fewer questions and complaints. Assistance from competent benefits counsel on carefully drafting and establishing administrative procedures for distribution can make a significant difference in this area.

Be sure to follow the All Things HR Blog as we debunk more SPD myths and explain more compliance tips for employers as part of this ongoing series.

### **About the Author**

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