



Department of Labor (DOL) Audits

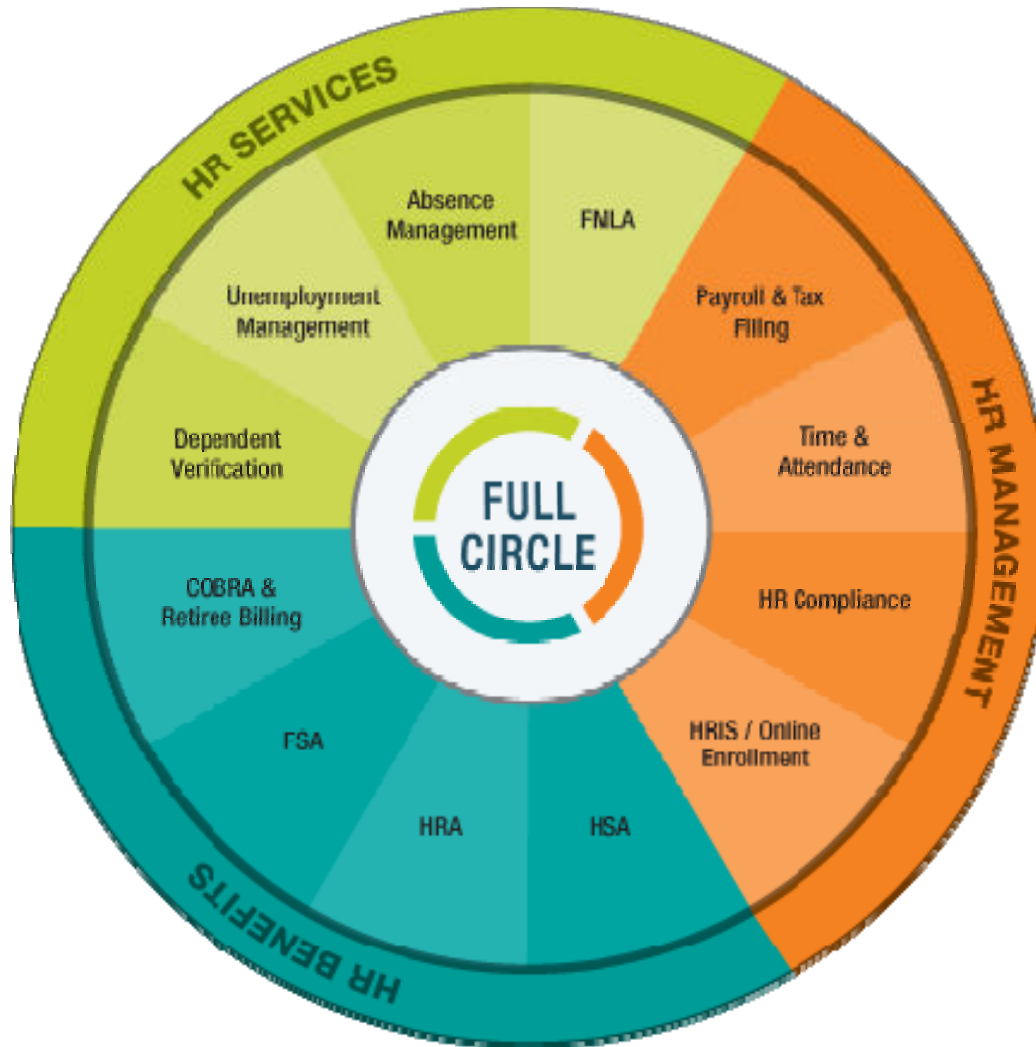
Presented by: Mary Bauman



- HR Benefits
- HR Management
- HR Services

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DOL Benefit Audits

DOL Benefit Audits



- What triggers a DOL audit of your health plan?
 - 5500 review
 - Participant complaint
 - New stories
 - Tips from other government agencies

DOL Benefit Audits



- The DOL is not required to have reasonable cause of an alleged violation to conduct an audit
- The DOL typically does not indicate what prompts an audit

DOL Benefit Audits



- The DOL bases its audit criteria on guidance developed from its Employee Benefits Security Administration (“EBSA”)
 - See Health Plan Investigations chapter of EBSA Enforcement Manual
<http://www.dol.gov/ebsa/OEManual/main.html>
 - See Compliance Assistance Guide: Health Benefits Coverage under Federal Law
<http://www.dol.gov/ebsa/publications/CAG.html>

DOL Benefit Audits



- The audits are conducted by DOL regional offices and each regional office may establish its own audit priorities

DOL Benefit Audits



- Who conducts the audit?
 - The DOL historically has audited qualified retirement plans rather than health plans
 - The DOL has retrained many of its qualified retirement plan auditors to now audit health plans and they have been redeployed out of the DOL regional offices

DOL Benefit Audits



- How is the audit conducted?
 - The DOL may telephone the employer to provide notice that an audit will begin
 - The DOL will send a letter asking for various documents and information

DOL Benefit Audits



- How is the audit conducted?
 - The DOL auditor may conduct the audit on site or alternatively, may conduct a desk audit
 - In a desk audit, all documents are sent by the employer to the auditor who reviews the documents at his or her desk and follows up with questions as needed

DOL Benefit Audits



- How far back does the DOL audit?
 - Typically, the audit looks at the past three years
 - If there are discrepancies, the DOL reserves the right to look back further



Documents and Information Requested

Documents and Information Requested



- Plan documents including any amendments
- SPDs, including any SMMs
- Other documents describing the plan such as employee handbooks, insurance contracts or booklets, etc.

Documents and Information Requested



- Participant enrollment materials (initial and annual)
- Summaries of benefits and coverage (SBCs) and uniform glossary
- Contracts with service providers such as TPAs and COBRA administrators
- Documents to describe how the cost of coverage is determined, including the COBRA costs
 - Fully-insured
 - Self-funded

Documents and Information Requested



- Payroll records showing employee deductions
- Financial records showing amounts paid by the employer for insurance premiums and claims for self-funded benefits

Documents and Information Requested



- Copies of any fiduciary bond (which is generally only required for plans funded through a trust)
- Copy of fiduciary liability insurance (not required but may be advisable)
- Copy of stop loss contract if self-funded

Documents and Information Requested



- Latest Form 5500s including schedules
- Copies of any applicable collective bargaining agreements
- Contact information for all individuals associated with employer who are involved with the administration of the plan

Documents and Information Requested



- If plan is funded through a trust, a copy of the trust agreement and the trust financial statements
- Copies of all COBRA notices – initial, upon qualifying event, upon termination, etc.

Documents and Information Requested



- Documents supporting compliance with the HIPAA portability rules
 - Certificates of creditable coverage/pre-existing condition exclusion
 - Special enrollment rights
 - CHIP

Documents and Information Requested



- Evidence to demonstrate compliance with the following federal laws
 - Mental Health Parity Act
 - Mental Health Parity and Addiction Equity Act
 - Newborns' and Mothers' Health Protection Act
 - Women's Health and Cancer Rights Act
 - Michelle's Law (generally no longer applicable)

Documents and Information Requested



- Information about any wellness program the employer might maintain in order to demonstrate if it complies with applicable law, including the HIPAA/ACA wellness program rules

Documents and Information Requested



- Documents to demonstrate compliance with various provisions of the ACA
 - If grandfathered, a copy of all participant notices explaining grandfathered status and records to demonstrate grandfathered status has been preserved
 - Regardless if grandfathered, evidence to demonstrate
 - Dependents are offered coverage to age 26
 - No rescissions of coverage
 - The plan has been modified to comply with the annual and lifetime dollar limits on essential health benefits
 - Waiting period is in compliance with ACA

Documents and Information Requested



- If the plan is not grandfathered, evidence to demonstrate:
 - Out-of-network emergency room care is provided on an in-network basis
 - Required preventive care provided on a first dollar basis
 - Adoption of all changes to relative to internal appeals and external reviews, including entering into contracts with at least three independent review organizations

Documents and Information Requested



- If the plan is fully-insured and has received any medical loss ratio rebates, an explanation of how the proceeds have been used and distributed (if necessary) to participants
- If the plan has hired an outside auditor, a copy of its findings such as a claims audit
- Copies of any minutes of meetings for example of the trustees, a benefit review committee or other committee supporting the plan

Documents and Information Requested



- Sample notice of adverse benefit determination
- Sample notice of internal appeal adverse benefit determination
- Sample of an external appeal adverse benefit determination

What Happens Next?



- If there is no violation, the DOL will issue a closing letter
- If the DOL determines there are one or more violations, it will typically issue a voluntary compliance notice letter
- Typically, the DOL will give the employer and its authorized representative an opportunity to defend the allegation(s)

What Happens Next?



- After discussion, if the DOL takes the position that there is one or more violations, the DOL's position is to promote voluntary compliance whenever possible



Case Studies

Case Study #1



- West Michigan employer maintained fully-insured group health plan
- DOL raised two concerns in audit
 - First concern regarding the actively-at-work language in the eligibility provision
 - Second concern regarding a precondition to obtaining mental health care

Case Study #1



- The DOL did not require the readjudication of any claims
- The DOL required the employer to go back to the insurer and demand that the insurer issue a rider to its policy modifying these two provisions
- The insurer was not required to amend all its policies for these two changes

Case Study #2



- Another West Michigan employer was audited by the DOL
- The DOL raised two concerns in audit regarding the employer's wellness program
 - First concern regarding whether participants were provided an adequate reasonable alternative if they were tobacco users
 - Second concern regarding whether participants were adequately notified of the availability of the reasonable alternative

Case Study #2



- The DOL did not require the employer to make any changes with respect to the prior period for its wellness program but did require the employer to make changes on a going forward basis

Case Study #3



- Another employer was audited here in West Michigan by the DOL and was questioned regarding whether it adequately provided a notice of special enrollment rights to employees who initially waive group health coverage
- Again, the employer was not required to go back and issue notices with respect to the prior period but was required to issue the notices on a going forward basis

Case Study #4



- Another employer (based out-of-state) is in the process of being audited by the DOL and in preparing for the audit has self-identified that it may have been mistaken regarding its understanding of whether it had maintained grandfathered status
- If the employer's understanding is incorrect, the employer failed to provide all required preventive care to participants since the grandfathered status was potentially lost

Case Study #4



- The employer has put together as much information as possible to demonstrate that there is a good faith basis that it did not make changes sufficient to lose grandfathered status
- The area of concern is regarding whether the employer impermissibly reduced its premium contribution share since March of 2010
- The DOL is in the process of reviewing the employer's records which have been produced for a desk audit

Other Audit Issues



- Another area to be aware of is that the DOL may focus its audit on alleged fiduciary breaches such as a failure to pay claims, failure to offer COBRA, overcharging participants for coverage or failing to properly account for and refund participant contributions with experience rated coverage
- Where there has been a fiduciary breach in these situations, the DOL can assess a penalty equal to 20% of the applicable recovery amount



Next Steps



- Best strategy to respond to a DOL audit is to self-audit in advance
- Issues can then be proactively addressed and resolved before DOL inquiry



Questions



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Contact the Presenter



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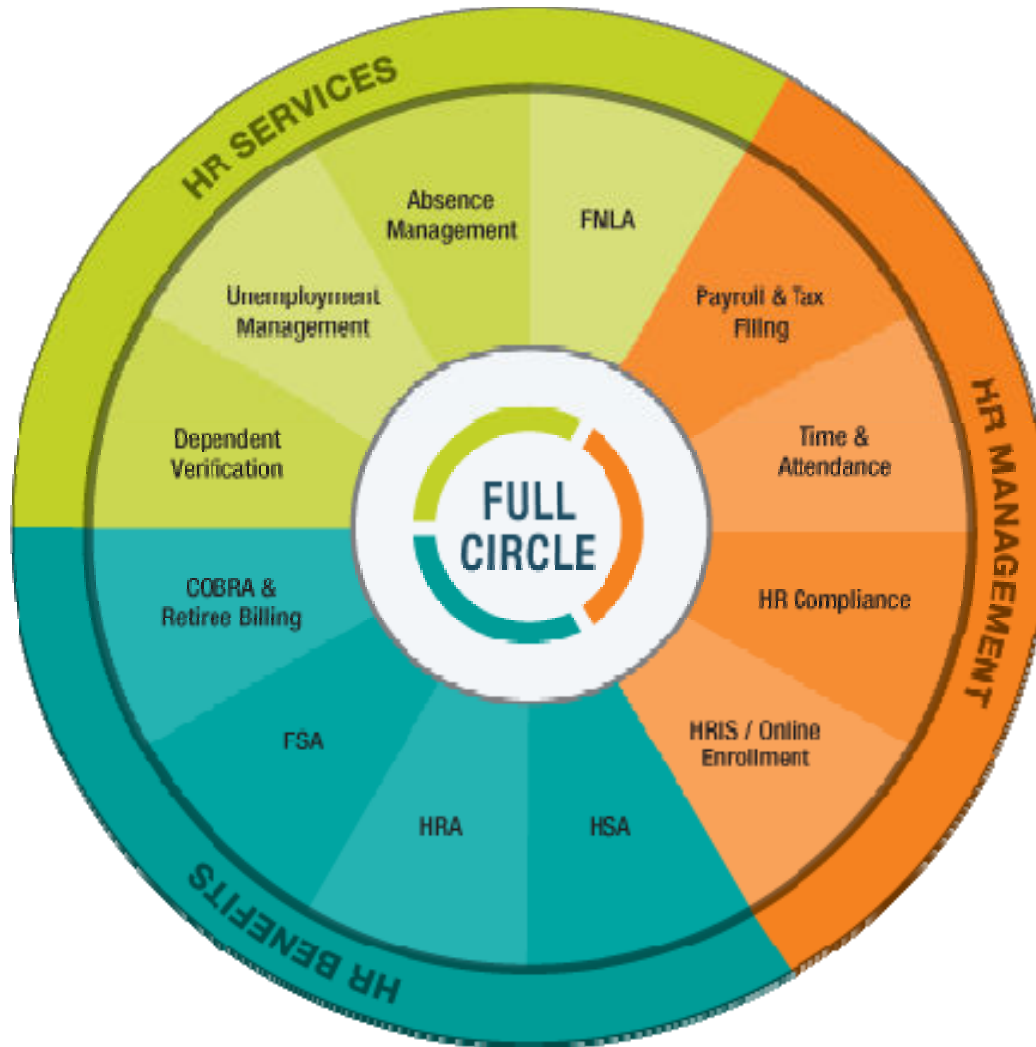
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