

Employee Benefit Plans Alert

Spring 2025 Edition

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This edition of the **Employee Benefit Plans Alert** focuses on the following topics:

- **ERISA Welfare Plans**
- **Section 125 Cafeteria Plans**
- **Section 457(b) Eligible Deferred Compensation Plans for Nongovernmental Entities**

ERISA Welfare Plans

The Employee Retirement Income Security Act (ERISA) of 1974 is a federal law designed to protect the interests of employees and their beneficiaries in employer-sponsored benefit plans.

ERISA welfare plans provide benefits other than retirement income and are typically maintained by an employer, an employee organization or both. Common types of welfare plans include:

- Health insurance
- Dental and vision coverage
- Life insurance
- Accidental death and dismemberment
- Disability benefits
- Death benefits
- Certain legal service plans
- Employee Assistance Programs (EAPs)

Section 104(b)(4) of ERISA requires every employee benefit plan to be in writing, provide certain disclosures to participants (e.g., summary plan description), and, when applicable, file reports with the Employee Benefit Security Administration (EBSA).

Reporting requirements for ERISA welfare plans, including Form 5500, depend on the number of enrolled participants as of the beginning of the plan year. Generally, plans with 100 or more enrolled participants must file Form 5500 annually. The form is due seven months after the plan year ends. To request a two-and-a-half-month extension, plan sponsors may file Form 5558 with the IRS before the original due date. Understanding these filing requirements is key to ensuring compliance. The Department of Labor (DOL) has issued notices to employers who filed Form 5500 for large retirement plans (more than 100 participants) but did not file for any welfare plan. Frequently, a Form 5500 filing was not required because the 100-participant threshold was not met.

Correcting delinquent filings for welfare plans is common. Plan sponsors should consider using the DOL's [Delinquent Filer Voluntary Compliance Program \(DFVCP\)](#) which includes a penalty calculator, online payment tools, instructions and manual calculation guidance. The PKF Employee Benefit Tax Services Practice has extensive experience using this program.

Section 125 Cafeteria Plan

Cafeteria plans, also known as Section 125 plans or premium-only plans, allow employees to choose from a range of pre-tax benefits, including options to pay for health premiums on a pre-tax basis. Many plans also offer flexible spending/reimbursement accounts for dependent care and unreimbursed medical expenses (e.g., copays and deductibles).

Pre-tax employee contributions to cafeteria plans are not subject to federal income tax, most state income taxes or FICA taxes. The employer portion of FICA tax is not required on employee contributions, resulting in tax savings.

While cafeteria plans can be exempt from Form 5500 filing requirements (unless they include health benefits), they are subject to annual nondiscrimination testing. This testing, similar to retirement plan testing, ensures benefits do not favor highly compensated employees.

A plan document must be created for a cafeteria plan. It is typically less voluminous than a retirement plan document and does not require the periodic updates needed for other types of employee benefit plans.

Meeting these compliance requirements provides significant tax-favored benefits.

Section 457(b) Eligible Deferred Compensation Plans for Nongovernmental Entities: *Plan Document Restatement*

Like qualified plans [e.g., 401(k), profit sharing and defined benefit plans], certain deferred compensation plans must be periodically restated to comply with evolving federal laws and regulations. The deadline to restate a nongovernmental sponsored 457(b) plan is December 31, 2025.

The plan's record keeper, third-party administrator or other providers can supply a compliant 457(b) restated plan document for the sponsoring entity to adopt. Careful consideration should be given to mapping the prior plan provisions accurately to the new document.

Previously, these types of plans required amendments to remain compliant with operational changes mandated by several key federal acts, including the SECURE, CARES, and MINERS Acts and the Tax Relief Act of 2020.

If the plan document is not restated and operations are not compliant the 457(b) plan may be treated as a 457(f) plan, which is subject to additional requirements. If those requirements are not met, the IRS may require the immediate inclusion of the accumulated benefit amount in the affected participants' income.

Contact Us

Our [Employee Benefit Services](#) team is available to assist plan sponsors in helping meet the various compliance requirements applicable to their plans. We provide comprehensive compliance services for qualified retirement plans, nonqualified deferred compensation plans and welfare plans. For more information, please contact your Client Services Partner or:

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