



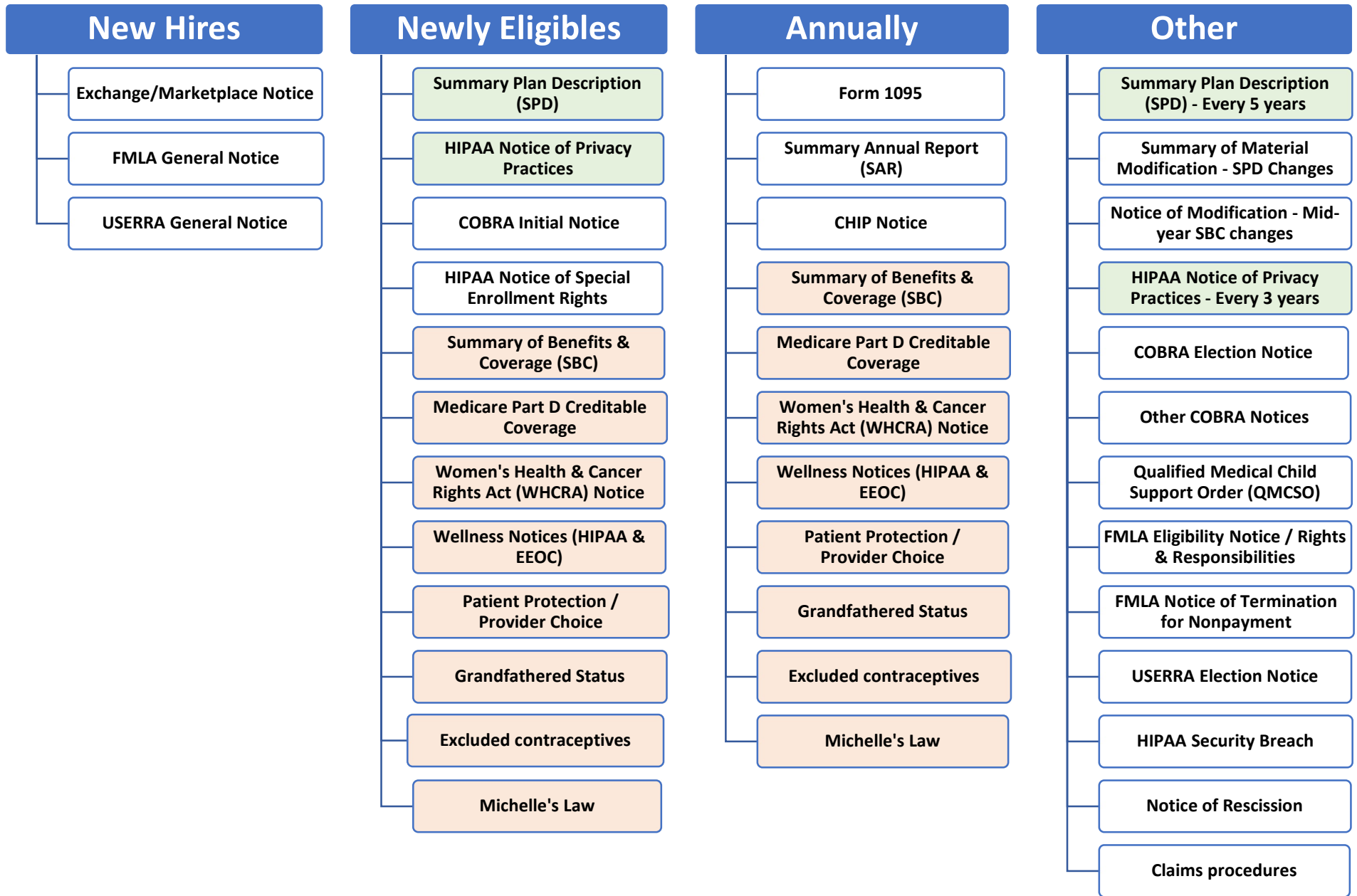
EMPLOYEE BENEFITS PARTICIPANT NOTICES AND DISCLOSURES 2023

The following guide sets forth most federal disclosure requirements under various employee welfare and benefit laws and regulations (it does not address state-specific requirements). The intent was to capture and describe the various notices required to be provided by the plan (or employer) to eligible individuals. Requirements to disclose or report information to government agencies (e.g., Form 5500 to the DOL) are not covered within this guide.

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NOTICES CATEGORIZED BY TIMING REQUIREMENTS



NOTICES REQUIRED IN THE SUMMARY PLAN DESCRIPTION (SPD)

Claims procedures

COBRA continuation information

Excluded Contraceptives

FMLA information

Grandfathered Status

HIPAA special enrollment rights

HIPAA privacy practices

Michelle's Law*

Newborns' & Mothers' Health Protection Act (NMHPA)*

Patient Protection / Provider Choice

Qualified Medical Child Support Order (QMCSO)

USERRA information

Wellness program (HIPAA) – Notice of reasonable alternative standard

Women's Health & Cancer Rights Act (WHCRA)

**These notices are technically only required in the SPD, but they are commonly included in packets for the newly eligible and during open enrollment.*

NOTICE DETAILS CATEGORIZED BY REGULATION

	Plans/Employers	Timing	Method of Delivery	Recipients
ERISA				
Summary Plan Description (SPD) An SPD provides a summary of key plan provisions.	Plans subject to ERISA	Must be distributed: <ul style="list-style-type: none"> • within 90 days of the effective date of coverage; • every 5 years; and • upon request 	Hand delivery, mail, or electronically if the DOL safe harbor is met	Participants (employees and former employees, but not spouses and dependents)
Summary of Material Modification (SMM) An SMM provides a summary of material changes to the SPD.	Plans subject to ERISA	Must be distributed each time the plan is materially changed and a new SPD is not created: <ul style="list-style-type: none"> • Within 60 days following the adoption of a material reduction in plan benefits • Within 210 days following the close of a plan year when the change is not a material reduction in benefits 	Hand delivery, mail, or electronically if the DOL safe harbor is met Should be included with the SPD whenever distributed until the SPD is updated with the latest changes	Participants (employees and former employees, but not spouses and dependents)
Summary Annual Report (SAR) A SAR is a boiled-down summary of the Form 5500.	Required for any plan subject to Form 5500 filing, but not for self-funded plans which are unfunded (i.e. without any segregation of assets in a trust or otherwise)	Must be distributed annually within 9 months following the last day of the plan year for which the Form 5500 is filed, unless a 2½ month extension is granted	Hand delivery, mail, or electronically if the DOL safe harbor is met	Participants (employees and former employees, but not spouses and dependents)
Claims Procedures Special notices are required: (a) when a pre-service claim is filed incorrectly; (b) when an urgent care claim is incomplete; (c) any time there is an extension to the determination deadline; (d) when there is a non-adverse determination for a pre-service or urgent care claim; (e) when a claim is denied; and (f) upon determination after a benefit review.	Plans subject to ERISA	Provided as applicable during the claims process (usually distributed by the party responsible for handling claims)	Claims procedures should be included in the SPD	Claimants

	Plans/Employers	Timing	Method of Delivery	Recipients
<p>Disclosure of medical necessity and denial information</p> <p>Certain disclosures, in addition to the rules and procedures required for claims under ERISA, are required in connection with any claims processed for mental health or substance use disorder coverage, setting forth: (i) criteria for medical necessity determinations; and (ii) the reason for any denial of reimbursement or payment for services.</p>	Group health plans offering mental health or substance abuse disorder benefits, but not excepted benefits	Provided as applicable during the claims process	Should be included in the SPD	Claimants
<p>Qualified Medical Child Support Order (QMCSO)</p> <p>A QMCSO is a court order requiring group health plan coverage for an employee's dependent, often in connection with a divorce or separation.</p> <p>Upon receiving a QMCSO, the employer must provide acknowledgment of receipt and a copy of the rules to the submitting custodian.</p> <p>Formal notice must also be provided when the order is approved/rejected.</p>	Plans subject to ERISA	Promptly notify participant of receipt, and then provide a determination within a reasonable period of time (2 separate notices)	Hand delivery, mail, or electronically if the DOL safe harbor is met QMCSO procedures, including participant rights and responsibilities, should be included in the SPD	Applicable employee and child(ren)

	Plans/Employers	Timing	Method of Delivery	Recipients
COBRA				
<p>Initial (General) Notice The initial notice provides information about COBRA continuation coverage.</p>	Group health plans subject to COBRA	Must be provided within 90 days of the effective date of coverage	<p>Hand delivery, mail, or electronically if the DOL safe harbor is met; however, mail is recommended to ensure receipt by covered spouses</p> <p>COBRA continuation information should be included in the SPD</p>	Participants and covered spouses; however, one notice addressed to both is adequate unless there is reason to know they reside at different addresses
<p>Election Notice COBRA election notices are distributed to qualified beneficiaries informing them of their COBRA rights when a qualifying event occurs. A qualifying event occurs when there is a loss of coverage due to termination of employment, reduction in hours, death of the participant, entitlement to Medicare (enrollment, not merely eligibility), divorce/legal separation, or loss of dependent status.</p>	Group health plans subject to COBRA	<p>Must be provided within 14 days of the plan administrator’s receipt of notification of a qualifying event</p> <p>Notice of a termination of employment, reduction in hours, the employee’s death, or the employee’s Medicare entitlement must be provided by the employer to the plan administrator (e.g., a COBRA administrator) within 30 days of the qualifying event, and the plan administrator must distribute the election notice within 14 days of receipt of the employer’s notification. If the employer is the plan administrator, the employer must provide the election notice within 44 days from the qualifying event</p>	Hand delivery, mail, or electronically if the DOL safe harbor is met; however, mail is recommended to ensure receipt by all qualified beneficiaries	All qualified beneficiaries; however, one notice addressed and mailed to all qualified beneficiaries is adequate unless there is reason to know they reside at different addresses
<p>Underpayment of premium When choosing to collect an underpayment that is “not significant,” it is necessary to notify the participant of the underpayment.</p> <p>A premium payment shortfall is insignificant if it is less than or equal to the lesser of (a) \$50; or (b) 10% of the COBRA premium.</p>	Group health plans subject to COBRA	Upon receiving an insignificant underpayment, the employer may provide notice requesting the remaining payment within 30 days	Hand delivery, mail, or electronically if the DOL safe harbor is met	COBRA participant

	Plans/Employers	Timing	Method of Delivery	Recipients
<p>Notice of Unavailability A notice of unavailability of continuation coverage is required when COBRA is not available in connection with a qualifying event, a second qualifying event, or a determination of disability from the Social Security Administration.</p>	Group health plans subject to COBRA	Must be provided within 14 days of the plan administrator's receipt of notification of a qualifying event (just like an election notice)	Hand delivery, mail, or electronically if the DOL safe harbor is met; however, mail is recommended to all who were expecting COBRA continuation coverage rights	Individuals who were expecting COBRA continuation coverage rights
<p>Notice of Termination A notice of termination must be provided if COBRA coverage is terminated prior to the maximum COBRA period.</p>	Group health plans subject to COBRA	Must be provided as soon as practicable, but not necessarily in advance of coverage termination	Hand delivery, mail, or electronically if the DOL safe harbor is met; however, mail is recommended to ensure receipt by all qualified beneficiaries	All qualified beneficiaries; however, one notice addressed and mailed to all qualified beneficiaries is adequate unless there is reason to know they reside at different addresses
<p>Notice of Conversion Rights A notice of conversion rights must be provided if the plan offers the option for conversion to individual coverage after group coverage ends.</p>	Group health plans subject to COBRA	Must be provided during the 180-day period prior to the end of the COBRA maximum coverage period	Hand delivery, mail, or electronically if the DOL safe harbor is met; however, mail is recommended to ensure receipt by all qualified beneficiaries	All qualified beneficiaries; however, one notice addressed and mailed to all qualified beneficiaries is adequate unless there is reason to know they reside at different addresses

	Plans/Employers	Timing	Method of Delivery	Recipients
HIPAA				
<p>Notice of special enrollment rights Notice describing special enrollment rights outside of open enrollment upon a loss of other health coverage; becoming eligible for a state premium assistance subsidy (Medicaid or CHIP); and acquiring a new spouse or dependent by marriage, birth, or adoption.</p>	<p>Group health plans subject to HIPAA portability rules</p>	<p>Must be provided at or before the time the employee is eligible to enroll in the group health plan</p>	<p>Hand delivery, mail, or electronically if the DOL safe harbor is met</p> <p>Information about special enrollment rights should be included in the SPD</p>	<p>All employees who are eligible to enroll</p>
<p>Notice of Privacy Practices HIPAA Privacy Notices describe a group health plan's current privacy practices regarding protecting personal health information (PHI).</p>	<p>Self-funded group health plans, and fully-insured group health plans with access to PHI</p> <p>Exception for self-administered, self-funded plans <50</p>	<p>Must be provided upon enrollment, upon request, and within 60 days of any material changes to a plan's privacy practices</p> <p>A reminder that the notice is available (or a redistribution) must be provided every 3 years</p> <p>Fully-insured plans that have access to PHI beyond summary health information and enrollment information must maintain a notice of privacy practices and provide it only upon request</p>	<p>Hand delivery, mail, or electronically if the individual consents to such delivery</p> <p>If the employer maintains a benefits website, the HIPAA Privacy Notice must also be included on the website</p> <p>Often included in the SPD</p>	<p>All participants (employees and former employees, but not spouses and dependents), and anyone who requests a copy</p>
<p>Security Breach Notice Upon discovering a breach of PHI, notification must be provided to affected individuals letting them know the situation, how they might protect themselves, and how they may obtain additional information.</p>	<p>Self-funded group health plans, and fully-insured group health plans with access to PHI</p> <p>Exception for self-administered, self-funded plans <50</p>	<p>No later than 60 days following discovery of the breach</p>	<p>1st class mail or electronically if the individual consents to such delivery</p>	<p>Each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, used, or disclosed</p>

	Plans/Employers	Timing	Method of Delivery	Recipients
Wellness Programs (HIPAA & EEOC)				
<p>Notice of Reasonable Alternative Standard Any health-contingent wellness program must provide a reasonable alternative standard (or waive the requirement completely) for participants unable to meet the usual standard due to medical reasons.</p>	Health-contingent wellness programs (individual must satisfy a standard, or engage in an activity to earn an incentive related to the group health plan ((e.g. reduction in premium or deductible))	Whenever a description is provided including information about the wellness program, unless the program is merely mentioned	Information about the availability of a reasonable alternative standard should be included in SPD	
<p>Confidentiality Notice Wellness programs that involve medical testing or disability-related questions must provide employees with information about what medical information will be obtained, how it will be used, who will receive it, and the restrictions on its disclosure.</p>	Wellness programs that involve medical testing or disability-related questions	Must be provided before an employee provides any health information, and with enough time to enable the employee to decide whether to participate in the program	Hand delivery, mail, or electronically It could be included in the SPD along with other wellness-related material	Any employee who is asked to submit to medical testing or respond to disability-related questions in order to earn an incentive
<p>Confidentiality Notice and Consent Wellness programs must obtain written consent from the spouse for collection of such health information after disclosing what medical information will be collected, how it will be used, and any restrictions on its disclosure.</p>	Wellness programs that ask about the manifestation of a disease or disorder of the spouse	Must be provided and consent obtained before spouse provides health information, and with enough time enable spouse to decide whether to participate in the program	Hand delivery, mail, or electronically	Any spouse who is asked to provide information about the manifestation of a disease or disorder in order to earn an incentive

	Plans/Employers	Timing	Method of Delivery	Recipients
Affordable Care Act (ACA)				
<p>Summary of Benefits & Coverage (SBC) The SBC acts as a uniform tool providing a simple way to compare plans. The SBC also includes a uniform glossary.</p>	All group health plans, but not excepted benefits or retiree-only plans	<p>Must be distributed:</p> <ul style="list-style-type: none"> • upon initial enrollment; • upon annual enrollment; • upon special enrollment; and • upon request 	<p>Hand delivery, mail, or electronically as long as a paper copy is available upon request and the following criteria are met:</p> <p>Participants who enroll:</p> <ul style="list-style-type: none"> • Those who enroll online may receive the SBC electronically • Those who enroll offline may receive the SBC electronically if the DOL safe harbor is met <p>Participants who waive: notification that the SBC is available on the Internet</p>	All eligible individuals (employees and former employees) as well as their spouses and dependents; however, one notice is adequate unless there is reason to know they reside at different addresses
<p>Notice of Modification Mid-year material changes to benefits described in the SBC require a notice of modification.</p>	All group health plans, but not excepted benefits or retiree-only plans	Must be provided 60 days in advance of the effective date of the change	<p>Hand delivery, mail, or electronically if the DOL safe harbor is met</p> <p>For those who are eligible but not enrolled, notification (by paper or e-mail) that the notice is available on the Internet is adequate</p> <p>Should be included with the SBC until the SBC is updated</p>	All participants (employees and former employees) as well as their spouses and dependents; however, one notice is adequate unless there is reason to know they reside at different addresses
<p>Exchange (Marketplace) Notice The Exchange Notice describes availability of public Exchange coverage and potential tax credit assistance.</p>	Employers subject to the Fair Labor Standards Act (FLSA)	Must be provided within 14 days of hire (there is no annual requirement to provide this notice)	Hand delivery, mail, or electronically if the DOL safe harbor is met	All new hires
<p>Form 1095 Applicable large employers are required to report information about the type of coverage offered to full-time employees.</p> <p>Employers offering self-funded group health plans are required to report information about coverage under the self-funded plan.</p>	Applicable large employee and employers offering a self-funded group health plan	Must be provided annually by January 31st	Hand delivery, mail, or electronically if the individual consents to such delivery	<p>Applicable large employees must provide the 1095-C to full-time employees</p> <p>Employers providing coverage under a self-funded group health plan must provide a 1095-B or 1095-C to covered individuals</p>

	Plans/Employers	Timing	Method of Delivery	Recipients
<p>Patient Protections/Provider Choice Plans that require designation of providers or certain pre-authorizations (including pediatricians for children or pre-authorization for obstetrical or gynecological care) must include notification of this requirement in any SPD or other plan description.</p>	Non-grandfathered group health plans, but not excepted benefits	Must be provided whenever an SPD or other similar description of plan benefits is provided	Should be included in the SPD	Plan participants (employees and former employees)
<p>Grandfathered Status A grandfathered group health that was in existence on March 23, 2010, is excused from some ACA requirements so long as certain changes are not made and notification of grandfathered status is provided.</p>	Grandfathered group health plans	Disclosure must be included in all materials that describe plan benefits	Should be included in the SPD	
<p>Excluded Contraceptives Non-grandfathered plans with a religious or moral objection to providing contraceptive coverage can avoid doing so, but then must provide information in its plan benefit descriptions indicating what contraceptive coverage is excluded</p>	Non-grandfathered plans with a religious or moral objection to contraceptives choosing not to provide coverage for some or all contraceptives as required under preventive coverage requirements	Must be provided whenever an SBC, SPD or other similar description of plan benefits is provided	Should be included in the SBC and SPD	
<p>Notice of Rescission Rescission (retroactive termination of coverage) is allowed only where the individual has engaged in fraud or made an intentional misrepresentation of material fact and advance notice is provided.</p>	Group health plans, but not excepted benefits	Must provide at least 30 days' advance written notice		Each participant (employee or former employee) who would be affected
<p>Surprise Billing Participants can only be charged in-network cost-sharing for certain emergency and non-emergency services received by out-of-network providers</p>	Group health plans, but not excepted benefits	Must include the notice on plan's public website and include the notice on each explanation of benefits (EOBs)	Notice will generally be made available on the carrier's or TPA's website, and the carrier or TPA should include it on EOBs	

	Plans/Employers	Timing	Method of Delivery	Recipients
Family & Medical Leave Act (FMLA)				
<p>General Notice Employers subject to FMLA must provide employees with information about the right continue to benefits (including employer contributions) through the leave, or to drop coverage and reinstate upon return.</p>	<p>All public sector employers</p> <p>Private sector employers with 50 or more employees</p>	<p>Must provide a poster on employer premises, and must provide a general notice in employee handbooks or other written guidance to new hires</p>	<p>Hand delivery, mail, or electronically</p> <p>Can be included in the SPD</p>	<p>Employees who are eligible for benefits</p>
<p>Eligibility Notice / Rights & Responsibilities Upon receiving a request for leave, employers subject to FMLA must provide notice indicating whether an employee is eligible for FMLA, and if so, also provide information about employee rights and responsibilities</p>	<p>All public sector employers</p> <p>Private sector employers with 50 or more employees</p>	<p>Upon determining an employee is eligible for FMLA-leave, employer must provide, within 5 business days of the initial request, an Eligibility Notice to the employee informing the employee if he or she is eligible for FMLA leave, and a Rights and Responsibilities Notice informing the individual of obligations relating to the leave</p>	<p>Hand delivery, mail or electronically</p> <p>The two notices may be combined into one</p>	<p>Employees who request leave which might be FMLA-protected</p>
<p>Notice of Termination for Nonpayment FMLA requires a 30-day grace period and notification at least 15 days prior to the termination of coverage for nonpayment.</p>	<p>All public-sector employers</p> <p>Private sector employers with 50 or more employees</p>	<p>Upon nonpayment during FMLA-protected leave at least 15 days prior to termination of coverage</p>	<p>Hand delivery, mail or electronically</p>	<p>Employees who are on FMLA-protected leave and fail to make the required employee contribution toward coverage</p>

	Plans/Employers	Timing	Method of Delivery	Recipients
Uniformed Services Employment & Reemployment Rights Act (USERRA)				
<p>General Notice Employers are required to provide employees with information about the right to continue benefits during a leave due to uniformed services, and/or to reinstate upon return.</p>	All public and private sector employers	Must provide a poster on employer premises	Continuation rights during leave due to uniformed services should be included in the SPD	
<p>Election Notice A specific individual notice under USERRA is not required, but a conservative approach is to design procedures and forms to comply with USERRA (similar to COBRA).</p> <p>One possible method is to prepare a USERRA continuation notice that can be attached to the front of the COBRA election notice when applicable. Any communications and forms should clarify that when both COBRA and USERRA apply, an election for continuation coverage will be an election to take concurrent COBRA/USERRA coverage.</p>			Election procedures, including participant rights and responsibilities, should be included in the SPD	Employees who request leave for uniformed services

	Plans/Employers	Timing	Method of Delivery	Recipients
Other Notices				
<p>Creditable Coverage Notice Group health plans that provide prescription drug benefits are required to provide information about whether the coverage is creditable.</p>	Group health plans that provide prescription drug benefits	<p>Must be provided:</p> <ul style="list-style-type: none"> annually to eligible individuals; prior to an individual’s initial Part D enrollment period; prior to the effective date of coverage; whenever coverage changes between creditable and non-creditable or coverage is no longer offered; and upon request <p>Providing the notice each open enrollment, or annually in early October, assuming it is also provided when individuals are first eligible, is generally compliant</p>	<p>Hand delivery, mail, or electronically if CMS electronic requirements are met, but CMS prefers paper documents because Part D-eligible individuals are more likely to receive and understand them</p> <p>Can be distributed with the SPD or other enrollment materials as long as its significance is sufficiently conveyed to recipients</p>	Medicare Part D eligible individuals who are enrolled in (or seeking to enroll in) the plan, although it’s generally easiest to include all eligible individuals
<p>CHIP Notice The State Premium Assistance Notice for Medicaid and CHIP informs employees of potential opportunities for premium assistance currently available in the state in which they reside.</p>	Required for all employers who offer a group health plan in a state that provides premium assistance under Medicaid or CHIP	Must be distributed annually before the beginning of the plan year	<p>Hand delivery, mail, or electronically if the DOL safe harbor is met</p> <p>Can be distributed with the SPD or other enrollment materials as long as its significance is sufficiently conveyed to recipients</p>	Eligible employees who live in a state offering premium assistance, although it’s generally easiest to include all eligible employees
<p>WHCRA Enrollment and Annual Notice Group health plans that provide mastectomy benefits must provide a notice describing the requirement that plans are required to provide a certain minimum level of benefits, including any deductibles and co-insurance limitations applicable to such coverage.</p>	Group health plans that provide mastectomy benefits	<p>Two separate notice requirements:</p> <ul style="list-style-type: none"> One notice must be provided when upon enrollment. The second notice must be provided on an annual basis. 	<p>Hand delivery, mail, or electronically if DOL safe harbor is met</p> <p>Should be included in the SPD</p>	All participants (employees and former employees), as well as their spouses and dependents; however, one notice is adequate unless there is reason to know they reside at different addresses

	Plans/Employers	Timing	Method of Delivery	Recipients
<p>NMHPA Notice Group health plans that provide benefits for hospital stays in connection with childbirth must provide a notice describing the requirement that plans may not restrict benefits for a hospital stay to less than 48 hours for vaginal delivery or 96 hours for a cesarean section.</p>	Group health plans that provide benefits for hospital stays in connection with childbirth		Should be included in the SPD	
<p>Michelle's Law Notice Notice describing rights of Michelle's Law, which enables a dependent child's eligibility to continue for a year under an employer-sponsored group health plan when dependent status is conditioned as a student upon enrollment as a full-time student and dependent cannot maintain student status due to a serious injury or illness</p>	Group health plans (but not excepted benefits) that offer dependent coverage beyond age 26 and condition eligibility upon full-time student status	Must be provided with any notice regarding a requirement for certification of student status for coverage under the plan	Should be included in the SPD	

Appendix A – Model Notices

CHIP Notice	https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/chipra/model-notice.pdf
COBRA Initial (General) Notice & Election Notice	https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra
EEOC Confidentiality Notice (for wellness programs)	https://www.eeoc.gov/laws/regulations/ada-wellness-notice.cfm
Exchange (Marketplace) Notice	https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/model-notice-for-employers-who-offer-a-health-plan-to-some-or-all-employees.pdf
Form 1095	https://www.irs.gov/pub/irs-pdf/f1095c.pdf https://www.irs.gov/pub/irs-pdf/f1095b.pdf
FMLA General Notice FMLA Eligibility Notice / Rights & Responsibilities	https://www.dol.gov/whd/regs/compliance/posters/fmla.htm https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-381.pdf
Grandfathered Status	https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf
HIPAA Notice of Privacy Practices HIPAA Security Breach Notice	https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/model-notices-privacy-practices/ https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html
HIPAA Notice of Reasonable Alternative Standard (for wellness programs)	https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf
HIPAA Notice of Special Enrollment Rights	DOL Reg. §2590.701-6(c)(1) https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf
Medicare Part D Creditable Coverage Notice	https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/Model-Notice-Letters.html
Newborns' & Mothers' Health Protection Act (NMHPA) Notice	DOL Reg. §2520.102-3(u)(2) https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf
Patient Protections/Provider Choice	DOL Reg. § 2590.715-2719A(a)(4)(iii) https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf
Summary Annual Report (SAR)	DOL Reg. §2520.104b-10(d)(4) https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/form-sar-welfare-plan.docx
Summary of Benefits & Coverage (SBC)	https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/sbc-template-new.pdf
Surprise Billing	https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/no-surprises-act/surprise-billing-model-notice.docx
USERRA General Notice	https://www.dol.gov/vets/programs/userra/poster.htm
Women's Health and Cancer Rights Act (WHCRA) Notice	https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-c.pdf

Appendix B – Delivery Requirements

In general, documents required under ERISA (e.g., SPD, SMM, SBC, SAR) may be hand delivered, mailed or provided electronically so long as the DOL electronic safe harbor requirements are met.

General Rule --- Mail

If choosing to mail the notices, it is not necessary to provide proof of receipt, but rather proof of mailing to the last known address. We generally recommend first-class mail, which may be accompanied by a “certificate of mailing.” This is a service provided by the USPS by which it is certifying the notice was in fact mailed on the date indicated. These certificates (which are a fraction of the cost of certified mail and can be secured on a “list” rather than individual basis) in conjunction with the legal concept of “presumed receipt” provide the evidence an employer would need if ever challenged.

Safe Harbors for Electronic Distribution

The DOL safe harbor allows electronic distribution if an employee:

- Has access to a computer at their regular workplace (**Workplace Access Safe Harbor**); or
- Affirmatively consents to electronic delivery (**Affirmative Consent Safe Harbor**).

Workplace Access Safe Harbor. Plan participants considered to have access to a computer at their regular workplace are those “*who have the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee and with respect to whom access to the employer’s or plan sponsor’s electronic information system is an integral part of those duties.*” This category also includes employees that work at home or travel, so long as they regularly access the employer’s electronic information system as a part of their normal duties. Note, however, that these requirements preclude the use of workplace kiosks in common areas (e.g., lunchroom or human resources offices) as a means of satisfying the requirements for employees who do not have individual computer access.

Affirmative Consent Safe Harbor. To provide documents electronically to those who do not have access to a computer at their regular workplace, the employer must contain affirmative consent. In addition, “*prior to consenting, the participant or beneficiary must also be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply, that consent may be withdrawn at any time, procedures for withdrawing consent and updating necessary information, the right to obtain a paper copy, and any hardware and software requirements.*”

General Rules for Safe Harbors. Regardless of which safe harbor exception a plan sponsor uses (and they can use both) the following rules apply.

- When providing notices electronically, each participant must be notified, in electronic or other means, of: (i) the documents that are being distributed electronically, (ii) the significance of the documents, and (iii) the right to request a paper copy of the document from the plan administrator.
- The plan administrator must take “*appropriate and necessary measures reasonably calculated*” to confirm receipt of the electronic documents (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information).

If the employer chooses to post required notices on the intranet for those who meet one of the safe harbors, it would still be necessary to send out a notification (electronically or otherwise) letting them know such notices have been made available. In addition, “*the website homepage should contain a prominent link to the website sections that contain information about the plan, the website should include directions on how to obtain a replacement for a lost or forgotten password to the extent one is needed, and disclosure documents should remain on the website for a reasonable period of time after participants and beneficiaries are notified of their availability.*”

SBC Electronic Safe Harbor. There is a separate safe harbor providing additional flexibility for SBC delivery. The safe harbor allows employers to provide SBCs electronically to participants and beneficiaries in connection with their online enrollment or renewal of coverage under the plan. See Q&A #1 - https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs9. There are a few ways an employer can qualify for this SBC Electronic Safe Harbor:

- **Online Enrollment.** If the employee is using online enrollment, the SBC could be provided with that. The individual must have the option to receive a paper copy of the SBC upon request.
- **Workplace Access or Affirmative Consent Safe Harbors for enrolled participants.** For enrolled participants who have not enrolled online, electronic delivery is allowed if DOL safe harbor requirements are met.
- **Eligible but not Enrolled.** For those who are eligible but not enrolled in a medical plan, notification (by paper or e-mail) that the SBC is available on the Internet is adequate.

Appendix C – Translation Requirements

For those employers who have employees whose first language is something other than English (e.g., Spanish), rather than being required to provide all communications or disclosures in the non-English language, generally a statement in such non-English language within the disclosure explaining how the individual can get assistance in interpreting or translating the information will meet requirements.

For the summary of benefits and coverage (SBC), it must be presented in a “culturally and linguistically appropriate manner.” To satisfy this requirement, SBCs provided to individuals with addresses in counties in which at least 10% of the population residing in the county is literate only in the same non-English language (the HHS website provides a current list which is updated annually) must include a one-sentence statement clearly indicating how to access interpretive services and/or a written translation on the page of the SBC with the “Your Rights to Continue Coverage” and “Your Grievance and Appeals Rights” sections. See IRS FAQ #13 and 14 found here for more information - https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs8.

Similarly, under ERISA, while there is no specific obligation to provide a summary plan description (SPD) or summary of material modification (SMM) in non-English languages, plans that cover certain minimum numbers of participants who are literate only in the same non-English language must provide some minimal assistance in that non-English language. Whether a plan must provide assistance in a non-English language depends on the size of the plan and the relative portion of plan participants that are literate only in the same non-English language, as follows:

- A large plan (one covering 100 or more participants) must provide language assistance if the lesser of (a) 10% of participants, or (b) 500 participants (or more) are literate only in the same language;
- A small plan (one covering fewer than 100 participants) must provide language assistance if 25% or more of the participants are literate only in the same language.

To meet this requirement, the SPD or SMM must include a statement, in the applicable non-English language, offering language assistance and clearly explaining the procedures that individuals must follow to obtain the assistance.