



Legal Alert: Calendar Year Plans Need to File Form 5500 by August 1, 2011

3/23/2011

The Basics

The Form 5500, Annual Return/Report of Employee Benefit Plan, including all required schedules and attachments, is used to report information concerning employee benefit plans. Generally, any administrator or sponsor of an employee benefit plan subject to ERISA must file information about each benefit plan every year. Typically, Form 5500 reports must be filed by the last day of the 7th calendar month after the end of the plan year. For calendar year plans, this means the Form 5500 is due by August 1, 2011 (as July 31 is a Sunday), unless a Form 5558 is submitted and received by the IRS on or before the Form 5500 report's normal due date.

For welfare benefit plans, Form 5500 reports must be filed for both fully-insured and self-insured plans. Welfare benefit plans include health plans, dental plans, vision plans, disability plans, life insurance plans, accidental death and dismemberment plans, and certain employee assistance programs that have more than 100 participants at the beginning of a plan year.

For retirement plans, the filing deadline for Form 8955-SSA, which employers must file directly with the IRS (i.e. not electronically as the Form 5500 is filed) for plan years beginning on or after January 1, 2009, is the same as the Form 5500 filing deadline. For more information on Form 8955-SSA, please see our March 4, 2011 Legal Alert, "[IRS Replaces Schedule SSA](#)," available at: <http://www.fordharrison.com/shownews.aspx?show=7000>.

Need an Extension?

Form 5558 provides for up to a two and one-half-month extension of the deadline. Alternatively, an automatic extension of time may be available based upon the due date of the employer's federal income tax return if: (1) the plan year and the employer's tax year are the same; (2) the employer has been granted an extension of time to file its federal income tax return to a date later than the normal due date for filing the Form 5500; and (3) a copy of the application for extension of time to file the federal income tax return is maintained with the filer's records. An extension granted by using the automatic extension procedure cannot be extended further by filing a Form 5558, nor can it be extended beyond a total of nine and one-half months beyond the close of the plan year.

The DOL requires that all Form 5500 reports, and any required schedules

and attachments, be completed and filed electronically. Thus, plan administrators must register for signing credentials and electronically sign all Form 5500 reports. Additionally, annual reports must be made available by plan administrators to plan participants and beneficiaries.

Penalties for Noncompliance

IRS penalties for late filing are \$25 per day up to a maximum of \$15,000. DOL penalties can run up to \$1,100 per day (no maximum). For willful violations, individuals face up to a \$100,000 fine and/or imprisonment up to 10 years.

If you have any questions regarding Form 5500 preparation, whether this requirement applies to your employee benefit plan, or any other employee benefits-related issues, please contact Tiffany Downs, tdowns@fordharrison.com, Isabella Lee, ilee@fordharrison.com, any member of Ford & Harrison's Employee Benefits practice group or the Ford & Harrison attorney with whom you usually work.