

BENEFIT TECHNOLOGY RESOURCES®

# HR Tech & Compliance Best Practices

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### Today's Presenters



**Corrina Nation** 

Manager of Strategic Initiatives,
Broker Relations

Washington DC



Josh Hoover

Director of Strategic Initiatives, Vendor Relations

Dallas, TX



**Stacy Barrow** 

Partner

Boston, MA



How can you remain compliant while using technology to streamline your processes?

## 3 Main Categories

Electronic Distribution
Reporting
Security



## Electronic Distribution



## **Electronic Distribution for Health and Welfare Plans**

#### **ERISA Includes a Number of "Notice" Requirements**

- SPDs
- Plan Amendments
- SARs
- COBRA Notices
- HIPAA Special Enrollment Rights Notice
- Women's Health and Cancer Rights Act (WHCRA) Notice
- Qualified Medical Child Support Order (QMCSO)

#### Raymond Thomas v. CIGNA

An instructive reminder that employers who rely on electronic delivery of plan-related documents must follow some fairly specific rules to make sure their documents are *delivered* and not just *furnished* 

## **Electronic Distribution for Health and Welfare Plans**

**ERISA Permits Electronic Disclosures If Certain Requirements Are Met** 

Steps taken to furnish documents are calculated to result in actual receipt

- Use return-receipt or notice of undelivered e-mail features
- Conducting periodic reviews or surveys to confirm receipt

## The Basics

Steps taken to safeguard confidentiality of personal information

Electronically delivered documents are prepared in a manner consistent with the style, format and content requirements applicable to the document

A paper version of the electronic document must be available on request (at no charge)

Each time an electronic document is furnished, a notice (electronic or paper) must be provided to each recipient describing the significance of the document

## **Electronic Distribution for Health and Welfare Plans**

### Once the basic requirements are met, documents may be furnished to two classes of potential recipients:

- Participants who have the ability to access documents through employer's electronic information system located where they are reasonably expected to perform duties
  - Employees working from home or on travel are covered
  - Distribution through a kiosk in a common area in the workplace does not comply with the requirements
- Other participants
  - Retirees and terminated participants with vested benefits, beneficiaries, alternate payees
    - Must affirmatively consent to receive the documents electronically
    - Must provide an electronic address
    - Must reasonably demonstrate their ability to access documents in electronic form

## **Electronic Distribution During COVID-19**

EBSA Disaster Relief Notice 2020-01 eases the burden for health and welfare plans (and retirement plans) by clarifying that:

- Employers will not violate ERISA if they fail to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the **COVID-19 National Emergency** ("Outbreak Period") as long as they act in good faith and furnish the information as soon as reasonably practicable.
- Good faith acts include use of electronic communication with participants who the employer believes have effective access to electronic means of communication, including email, text messages, and websites.

#### The Technology Side

**Onboarding** modules usually include I-9 and eVerify functions, as well as the option to capture electronic consent

Carrier EDI files have to be reviewed periodically

Benefits Administration and Payroll System Integrations must be evaluated based on your integration strategy COBRA notices for New Hires and Qualified Beneficiaries require two separate files



IRS proposing penalties for late filings, filings with incorrect or missing TINs, or *filings remitted* via paper when electronic filing was required (when submitting 250+ forms)

#### Failure to file electronically:

Applies to each form over 250 that was filed by paper instead of electronic

3 Penalty Tiers	Tier 1	Tier 2	Tier 3
	Returns Filed After The Due Date But Within 30 Days	Returns Filed After The Due And After 30 Days, But Before August 1	Returns Filed After August 1

- Generally have 45 days to respond
- Had been focused on 2017 prior to COVID-19

When responding an employer must indicate if it is in full agreement, partial agreement, or total disagreement with the penalty

- If partially agree or totally disagree, employer must submit signed statement explaining why failure was due to reasonable cause and not willful neglect
- Consult with ERISA counsel before responding

TIN Failure	Failure to File Electronically	Tier 1 (Corrected in 30 days)	Tier 2 (Corrected by August 1)	Tier 3 (Corrected after August 1)
\$260.00/form	\$260.00/form	\$50.00/form	\$100.00/form	\$260.00/form

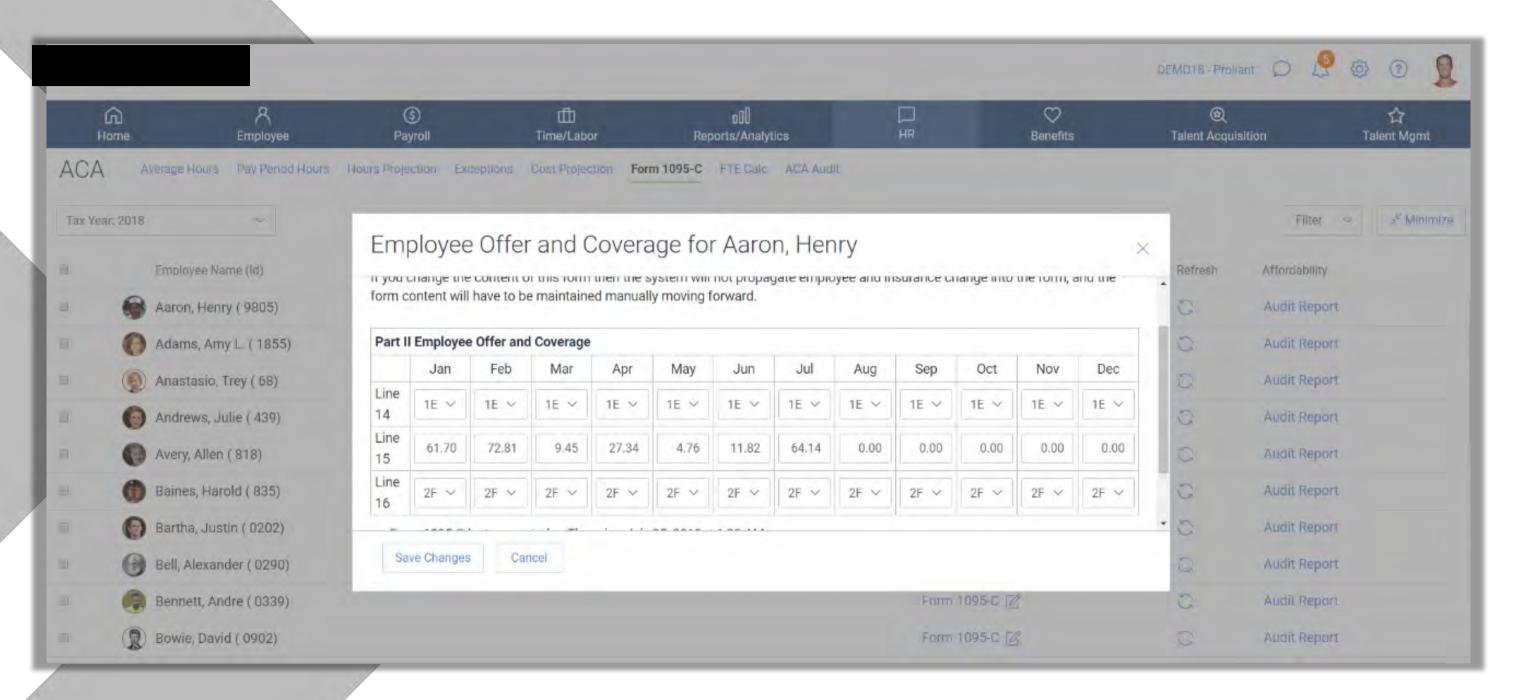
Penalty amounts (2017 shown)

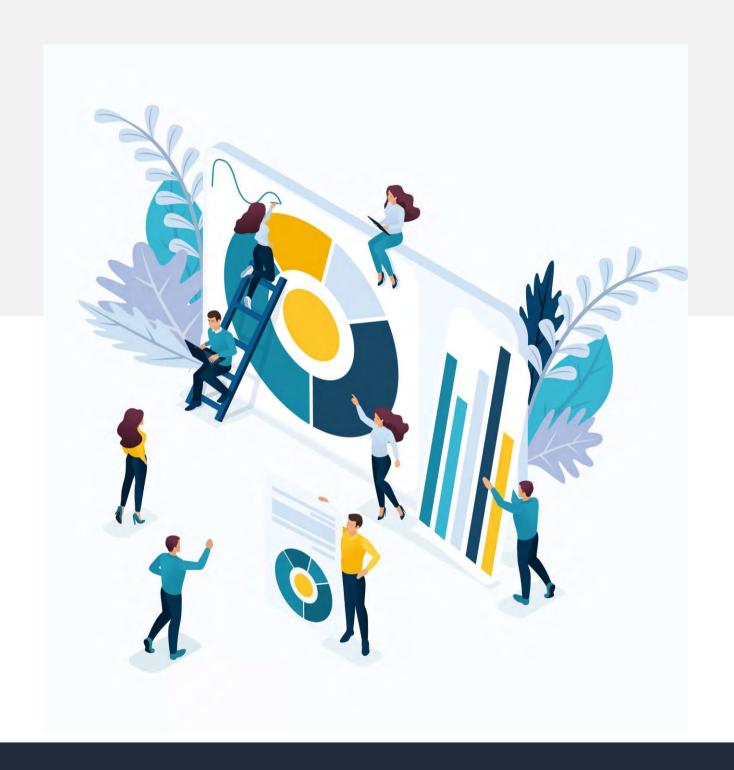
#### **Tracking**

- Tracking full-time employee status
  - Payroll systems
  - Separate tracking system integrated with time or payroll data
- "Proof" of offer of coverage
  - Documentation of an offer of coverage is critical

#### Reporting

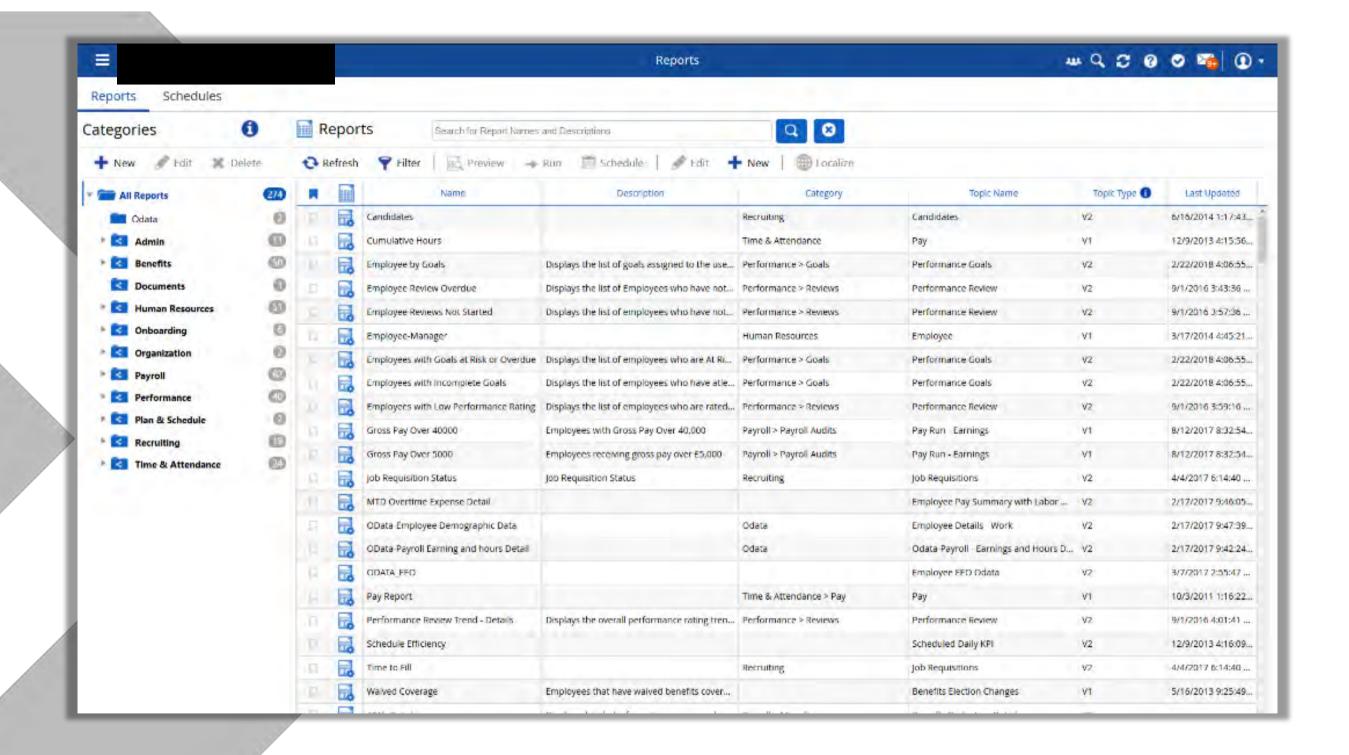
Technology only vs. Full service



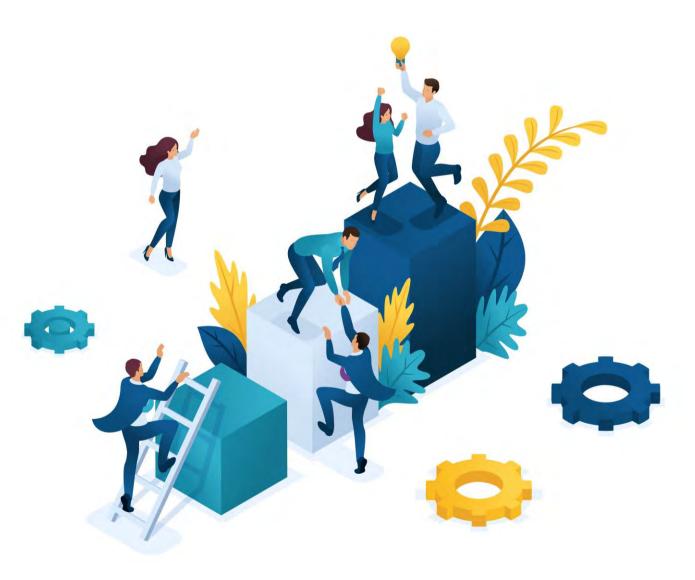


#### **Employer Reporting**

- > EEOC
- Workers Comp
- > OSHA
- > FMLA
- > FFCRA







#### **Security & Disclosures**

#### BEST PRACTICES FOR EMPLOYER'S "HIPAA WORKFORCE"

#### **Avoid using email to transmit PHI:**

- ✓ When transmitting e-PHI to a vendor, use a vendor secure website instead of email when possible
- ✓ Upon receipt of an email with PHI from a participant which requires a response that contains PHI, respond by telephone to the extent possible

#### If you must use email to transmit PHI:

- ✓ do not use identifiers to the extent possible (in the message and the subject line);
- ✓ delete the email chain below your message;
- ✓ use caution regarding recipients (e.g., reply all); and
- ✓ if the email must be sent outside the company, use encryption where possible

#### **Security & Disclosures**

#### BEST PRACTICES FOR EMPLOYER'S "HIPAA WORKFORCE"

#### Physical safeguards: a focus when working remotely

- ✓ Computer screens should be out of sight from others or used with a privacy screen
- ✓ Log-off from your computer when you walk away for any amount of time
- ✓ Never download PHI to your personal computer or send it to your personal email address

#### Has the vendor completed a SOC audit?

• If the system really matters – you may need professional help



## The Technology Side

#### **Multi-Factor Authentication**

• More and more vendors are enabling this with the rise of mobile



#### Privacy laws

- CCPA
- GDPR



#### Key Takeaways

- Document your data integration strategy so nothing falls through the cracks
- Evaluate your systems and data ongoing trust but verify
- Lean on your advisor and vendor to ensure all necessary disclosure processes are in your HR tech system

## questions?

Reach out to the BAN agency that referred you to this webinar.

