

# ERISA Notices Distribution Guide and Sample Language

The Department of Labor (DOL) provides distribution rules for various methods of delivering benefit plan documents to employees as required by the Employee Retirement Income and Security Act (ERISA). Employers are required to “use measures reasonably calculated to ensure actual receipt of the material by the plan participants, beneficiaries and other specified individuals.” An employer will need to apply certain criteria to each employee to determine the best distribution option. The three methods described are hand distribution, mail distribution, and electronic distribution. Detailed information regarding ERISA electronic distribution rules may be found on the [ERISA: Electronic Distribution of Health Plan Notices](#) page.

## Hand Distribution Rules

The DOL allows hand delivery of required notices. The rules do not specifically define hand delivery, but they do specify that placing ERISA-required notices in a common area for employees to access is not acceptable. The literal approach to physically hand-delivering documents to an employee requires proof of delivery to be collected and maintained. In circumstances where these documents are hand delivered, an employer may have the employee sign a statement of receipt.

## Sample Language

[Company name] is required by the Employee Retirement Income and Security Act (ERISA) and other governmental entities to furnish certain notices to employees entitled to benefits under [company name]’s Health and Welfare Benefit Plan. The following documents have been hand-delivered:

- Summary Plan Description (SPD)
- Summary of Material Modifications (SMM)
- Summary of Material Reduction (SMR)
- Summary Annual Report (SAR)
- Summary of Benefits and Coverage (SBC)
- Uniform Glossary of Health Coverage and Medical Terms
- Notice Regarding the Availability of Health Insurance Marketplace Coverage Options
- Medicare Part D Notice of [Creditable/Non-Creditable] Coverage
- Notice of Special Enrollment Rights
- Women’s Health and Cancer Rights Act Notice (WHCRA)
- Newborns’ and Mothers’ Health Protection Act Notice (NMHPA)
- HIPAA Notice of Privacy Practices for Protected Health Information
- Medicaid and the Children’s Health Insurance Program Notice (CHIP)
- General Notice of COBRA Rights
- COBRA Qualifying Event Notice
- COBRA Election Notice

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- Any other documents required under ERISA § 104(b)(4) requested by a participant or beneficiary of the plan or made available under ERISA § 104(b)(2)
- Notice of Patient Protections [remove if included in SPD]
- Grandfathered Health Plan Status Disclosure [remove if not applicable]
- Wellness Program Disclosures [remove if not applicable]

I confirm receipt of the above documents and notices by hand delivery. I acknowledge I may request an additional or replacement copy at any time by notifying [name, phone number, and email address].

Employee name: \_\_\_\_\_ Date received: \_\_\_\_\_

Employee signature: \_\_\_\_\_

## Mail Distribution Rules

The DOL allows required notices and documents to be mailed to plan participants and beneficiaries. Notices may be mailed using first, second, or third-class mail. First-class mail represents a best practice as it provides free forwarding and return services. Proof of mailing should be captured and maintained. Another best practice may include documenting the mailing procedures and making a photocopy of the envelope after postage is applied with the recipient's name and address visible.

## Sample Language

[Company name] is required by the Employee Retirement Income and Security Act (ERISA) and other governmental entities to furnish certain notices to employees entitled to benefits under [company name]'s Health and Welfare Benefit Plan. Notices included in this mailing are as follows:

- Summary Plan Description (SPD)
- Summary of Material Modifications (SMM)
- Summary of Material Reduction (SMR)
- Summary Annual Report (SAR)
- Summary of Benefits and Coverage (SBC)
- Uniform Glossary of Health Coverage and Medical Terms
- Notice Regarding the Availability of Health Insurance Marketplace Coverage Options
- Medicare Part D Notice of [Creditable/Non-Creditable] Coverage
- Notice of Special Enrollment Rights
- Women's Health and Cancer Rights Act Notice (WHCRA)
- Newborns' and Mothers' Health Protection Act Notice (NMHPA)
- HIPAA Notice of Privacy Practices for Protected Health Information
- Medicaid and the Children's Health Insurance Program Notice (CHIP)
- General Notice of COBRA Rights

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- COBRA Qualifying Event Notice
- COBRA Election Notice
- Any other documents required under ERISA § 104(b)(4) requested by a participant or beneficiary of the plan or made available under ERISA § 104(b)(2)
- Notice of Patient Protections [remove if included in SPD]
- Grandfathered Health Plan Status Disclosure [remove if not applicable]
- Wellness Program Disclosures [remove if not applicable]

[Company name] will make every effort to ensure documents are mailed based on any required deadlines. For questions, please contact [name, phone number, and email address].

## Electronic Distribution Rules

The DOL safe harbor rules allow employers to distribute required ERISA documents electronically based on certain criteria.

### Employee with Assigned Work Computer

For an employee who has a work computer assigned to them for daily use, ERISA-required documents may be delivered electronically if:

- The employee does not share the computer with others; and
- The employee uses the work computer as a regular, daily part of their job.

Each time an ERISA-required document or notification is provided to an employee meeting the above criteria, the notice must contain language describing the significance of the document and their right to obtain a paper copy upon request.

### Sample Language

[Company name] is required by the Employee Retirement Income and Security Act (ERISA) and other governmental entities to furnish certain notices to employees entitled to benefits under [company name]'s Health and Welfare Benefit Plan. All employees with regular access to the company's computer systems and who use a company-provided email address and computer as part of their normal business day are provided the following ERISA and other mandatory documents, as applicable, electronically throughout the plan year:

- Summary Plan Description Document (SPD)
- Summary of Material Modifications (SMM)
- Summary of Material Reduction (SMR)
- Summary Annual Report (SAR)
- Summary of Benefits and Coverage (SBC)
- Uniform Glossary of Health Coverage and Medical Terms

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- Notice Regarding the Availability of Health Insurance Marketplace Coverage Options
- Medicare Part D Notice of [Creditable/Non-Creditable] Coverage
- Notice of Special Enrollment Rights
- Women’s Health and Cancer Rights Act Notice (WHCRA)
- Newborns’ and Mothers’ Health Protection Act Notice (NMHPA)
- HIPAA Notice of Privacy Practices for Protected Health Information
- Medicaid and the Children’s Health Insurance Program Notice (CHIP)
- General Notice of COBRA Rights
- COBRA Qualifying Event Notice
- COBRA Election Notice
- Any other documents required under ERISA § 104(b)(4) requested by a participant or beneficiary of the plan or made available under ERISA § 104(b)(2)
- Notice of Patient Protections [remove if included in SPD]
- Grandfathered Health Plan Status Disclosure [remove if not applicable]
- Wellness Program Disclosures [remove if not applicable]

Notices and documents [will be delivered as attachments to your work email address or are available on the company’s intranet located at [add location]].

You may print, download, and retain any documents provided. You have the right to request and obtain a paper copy of any required documents at any time by notifying [name, phone number, and email address].

## Employee Without Assigned Work Computer

Consent is required prior to providing an employee with ERISA-required documents electronically when:

- The employee does not have a work computer assigned to them for daily use;
- The employee has a work computer but must share the computer with another employee; or
- The employee has a work computer available but does not use it as a continuous, daily part of their job.

Each time an ERISA-required document or notification must be provided to an employee meeting any of the above criteria, the employee must provide consent prior to receiving notice electronically. The notice must also contain language describing the significance of the document and their right to obtain a paper copy upon request.

Employers can use this customizable [Consent to Receive Electronic Health and Welfare Plan Documents](#) sample form, or use the sample language below.

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## Sample Language

[Company name] is required by the Employee Retirement Income and Security Act (ERISA) and other governmental entities to furnish certain notices to employees entitled to benefits under [company name]'s Health and Welfare Benefit Plan. To provide these notices electronically, we require your written consent first. You may revoke your consent at any time by notifying [name, phone number, and email address]. You have the right to request and obtain a paper copy of any required documents. The attached form outlines the specific notices for your consent and includes the electronic method of delivery and your right to request paper copies of any document. You may revoke consent at any time by completing a new form. For questions, please contact [name, phone number, and email address].

## Recordkeeping Requirements

Maintaining proper documentation for distribution methods, required consents, and receipt of notices should be retained in accordance with an employer's policy on records retention, noting that ERISA-related items should be kept for eight years.