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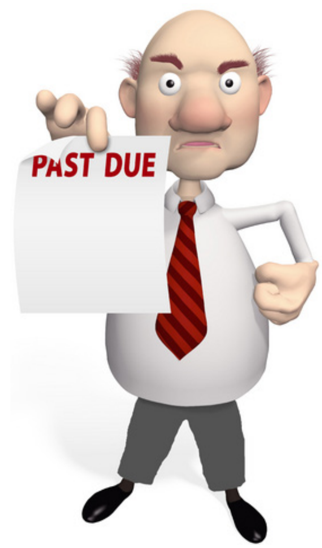
Commco Comments

Timely Information and Updates for Employers and Retirement Plan Sponsors

DOL Increases Penalties for Late 5500 Filings

Effective January 15, 2021, the Department of Labor (DOL) penalty for failure to properly file a Form 5500 annual report has increased from $2,233 to $2,259 per day, with no maximum. In addition to the DOL penalties, the IRS can also assess a penalty of up to $250 per day, up to a maximum of $150,000 per delinquent form. With such severe potential penalties, it is important to know your responsibilities regarding form 5500 and what steps you can take to request penalty remediation if a deadline is missed.

In most cases, a plan's third party administrator (TPA) will prepare the Form 5500 based on census information received from the plan sponsor, but it remains the plan sponsor's responsibility to complete the online filing process. Some TPA firms may offer 5500 filing as an optional add-on service. Consult your TPA to confirm your plan's current 5500 filing procedure and any possible alternatives to consider. The Form 5500 filing deadline is the last day of the seventh month after the plan year ends. For plans that operate on a calendar year basis, this means July 31.



Extensions may be requested by filing IRS form 5558. If an extension is requested before the original due date has passed, and the request is to extend no later than the 15th day of the 3rd month after the normal deadline (for calendar year plans, this means October 15th), approval is typically automatic.

To correct a missed filing, the DOL offers a Delinquent Filer Voluntary Compliance Program (DFVCP). To be eligible for the program, the plan sponsor must not have been notified in writing by the DOL of a failure to file a timely report. Because correction under the DFVCP cannot be started once notified by the DOL, it's important to have an internal review process in place to catch and correct any oversights on a timely basis.

When missed filings are corrected under the DFVCP, the penalty is reduced to $10 per day. Further, under the DFVCP, penalties for small plans (generally defined as fewer than 100 participants) are capped at $750 for a single late filing year and $1,500 total if multiple years' missed filings are corrected. For large plans (generally 100 participants or more) those caps are $2,000 for a single late form and $4,000 for multiple years' late forms.

In addition to the reduction of DOL penalties, filing under the DFVCP generally causes IRS penalties to be waived in full (if Form 8955-SSA is required to be filed, it must be separately filed with the IRS to obtain the possible penalty waiver).

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Who is generally responsible for ensuring that a plan's Form 5500 is filed on time?

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To comply with the DFVCP, the plan administrator must first file all late Forms 5500 for which relief is sought, indicate on the Form 5500 that it is filing under DFVCP, and then file a separate submission to request the penalty relief. If more than one plan is involved, separate filings must be made for each plan.

For more information regarding filing Form 5500, consult your plan's third party administrator. If you need assistance connecting with your third party administrator, email us at newsletter@thecommco.com.

Required Minimum Distributions Back On for 2021

On January 1, 2020, the age at which Required Minimum Distributions (RMDs) are required to begin was increased from 70½ to 72 (except for those who had already turned 70½ before 2020). Then, as part of the CARES Act passed last spring, RMDs were waived for 2020.

Owners and terminated or retired employees are now once again required to take RMDs from their qualified retirement accounts beginning the year in which they turn 72. Non-owner participants who are actively employed are granted an exception to the requirement and may defer taking RMDs from their current employer's retirement plan (but not from IRAs or previous employers' plans) until after they retire.

Responsibility for RMD compliance ultimately rests with the participant. However, third party administrators can assist by providing RMD lists to employers. Additionally, employers can assist by reaching out to affected participants, and our team is available to help participants understand and complete the distribution process. Email newletter@thecommco.com with any RMD questions.