

# Form 5500 Filing: A Dangerous Compliance Trap

Avoiding federal penalties is perhaps the largest incentive for employers to administer compliant benefit plans, and for Form 5500 filers, their risk potential is only growing. Generally, a Form 5500 must be filed for health and welfare plans with more than 100 participants on the first day of the plan year. Such plans may include health, dental, vision, life insurance, short-term and long-term disability, and health FSA plans. Form 5500 filings are not required for all health and welfare plans, such as those sponsored by a governmental employer or by a church, so employers must evaluate each of their offered plans to determine if it is subject to ERISA and therefore Form 5500 filing is required.



## Rising Risks

Employers who must file Form 5500s have to comply with regulations from both the Internal Revenue Service (IRS) and the Department of Labor (DOL), and recent legislation has increased potential IRS penalties for late and non-filers. After passage of the SECURE Act in 2019, the IRS late filing penalty has been multiplied by 10, rising to \$250 per day with a maximum penalty of \$150,000 per plan year. While this increase is significant, the DOL penalty for late filing is still much more punitive, with penalties of up to \$2,233 per day with no yearly maximum. When it comes to avoiding these penalties, accurate filing is just as important as filing on time. Form 5500s that are filed on time but with errors can be rejected and considered late, exposing an employer to potentially devastating penalty assessments. Because of this, it's extremely important for employers to not only know their risks, but take proactive steps to avoid non-compliance, such as working with filing and compliance experts.

## When Do Employers Need to File?

The due date for filing a Form 5500 is the last day of the seventh month after the plan year ends. The most common filing due date is July 31st for employers with a calendar-year plan. However, it's best for employers to file Form 5500s and associated schedules well in advance of the deadline. The IRS recommends ways to avoid filing

errors, including hiring an outside service provider (e.g., BASIC) to take responsibility for filing accurately and on time. Employers should contact a third-party administrator (TPA) long before their filing deadline to ensure the contracted TPA has plenty of time to review the company's welfare plans and filing obligations.

## Miss Your Filing Deadline?

When an employer discovers a Form 5500 was due after the filing deadline has passed, what should they do? It is relatively common for employers to discover a missed Form 5500 reporting obligation, sometimes years down the road. While this discovery can come as a shock, the DOL has a program that allows employers to bring their filings up to date. Their Delinquent Filer Voluntary Compliance Program (DFVCP) encourages employers to bring plans into compliance with past filings by offering reduced penalty amounts. The DFVCP outlines penalties of \$10 per day past the filing deadline with a maximum of \$2,000 per year and total penalty cap of \$4,000 per plan, regardless of the number of years filed at one time. This program offers significant relief from the standard DOL penalties. BASIC's expert compliance officers can assist employers with the DFVCP to ensure late filing is corrected and avoided in future plan years.