

News & Types: Employment, Labor & Benefits Update

# Failing to File a Form 5500 Annual Report

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Practices: Employment, Labor & Benefits

Generally, 401(k) plan sponsors must file a Form 5500 Annual Report by the last day of the seventh month after the plan year ends using the Department of Labor's ("DOL") electronic filing system. The failure to file a complete and accurate Form 5500 by the deadline exposes a company\plan sponsor to significant civil penalties. For instance, in addition to other penalties, the DOL may assess a civil penalty of up to \$1,100 per day for failing or refusing to file.

In an effort to encourage compliance with the annual reporting requirements, the DOL designed and supports the Delinquent Filer Voluntary Compliance Program ("DFVCP"). Participation in DFVCP is limited to companies\plan sponsors who have not already been notified in writing by the DOL of their failure to file a required Form 5500 Annual Report. To participate, a company\plan sponsor must file a complete Form 5500 Annual Report for each "missing" plan year and submit a penalty payment either electronically or through the mail. DFVCP penalty payments are significantly less than the potential civil penalties that are assessable under ERISA.

The basic penalty amount is \$10.00 per day for delinquent filings. However, the DOL provides "per filing" and "per plan" caps on the basic per day penalty amount. The maximum penalty for a single late annual report is \$750 for plans with fewer than 100 participants at the beginning of the plan year ("small plans") and \$2,000 for plans with more than 100 participants ("large plans"). In addition, DFVCP also has a "per plan" cap that is designed to encourage companies\plan sponsors to file annual reports for multiple years. The "per plan" cap for a small plan is \$1,500 and for a large plan \$4,000 regardless of the number of late Form 5500 Annual Reports that are filed for a plan at the same time.

All companies\plan sponsors should develop an internal compliance calendar to ensure that all Form 5500 Annual Reports, required participant notices, summary plan descriptions, etc. are prepared, distributed and/or filed by the applicable deadlines. Should you have any questions about a Form 5500 Annual Report filing, please call do not hesitate to call a member of the Employment, Labor and Benefits Practice Group.