

Delinquent Filer Voluntary Compliance Program Updated

2/4/2013

Practices: Employment, Labor & Benefits

On Monday, January 28, 2013, the U.S. Department of Labor ("DOL") announced technical updates to its Delinquent Filer Voluntary Compliance Program ("DFVCP"). The DFVCP program was established in 1995 and was later expanded and updated in 2002. Under ERISA, most employers are required to file a Form 5500 report on an annual basis for their welfare and retirement plans. If an employer fails to file, refuses to file or files an incomplete Form 5500 annual reports, it is subject to significant civil penalties.

The following penalties may be assessed by the DOL:

- **Late Filers:** If a company files a late Form 5500 annual report, the DOL may assess a penalty of \$50 per day with no time limit for the period of failure to file.
- **Failure to File:** If a company fails to file an annual report, the DOL may assess a penalty of \$300 per day, up to \$30,000 per year, until a complete report is filed.

In contrast, if an employer voluntarily files all past due Form 5500 annual reports under the DFVCP program, the employer benefits from significantly reduced civil penalties.

- **Small Plans:** For plans with fewer than 100 participants at the beginning of the plan year, the reduced penalty amount is generally \$10 per day for each day the annual report is filed after the date on which the annual report was due, not to exceed \$750. If there is more than one delinquent Form 5500 annual report for the same plan, the maximum penalty amount is \$750 for each annual report, not to exceed \$1,500 per plan.
- **Large Plans:** For plans with more than 100 participants at the beginning of the plan year, the reduced penalty amount is generally \$10 per day for each day the annual report is filed after the date on which the annual report was due, not to exceed \$2,000. If there is more than one delinquent Form 5500 annual report for the same plan, the maximum penalty amount is \$2,000 for each annual report, not to exceed \$4,000 per plan.

If an employer has already received a written notification from the DOL of its failure to file one or more Form 5500 annual reports, it is not eligible to participate in the DFVCP program. However, a late-filer notice from the IRS will not disqualify a plan from participating in the DFVCP program.

Because of the reduced penalties under the DFVCP, we encourage all companies to review their filing status and ensure that compliance. Often, due to a change in H.R. professionals or a shift in responsibilities, a Form

5500 annual report is overlooked and not filed. Please be sure to contact your relationship attorney with any questions.