

Professional Perspective

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# Non-English Language Assistance Requirements Under ERISA & ACA

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Many workplaces in America have a portion of the workforce for whom English is not the primary language. Employers will want to ensure clarity in all employee interactions and, where language is an issue, take additional measures to facilitate communication.

In the benefits area, language is particularly important, not only for purposes of function and principle, but also as a matter of legal compliance. Both the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Affordable Care Act (ACA) have specific requirements that assistance be offered in a non-English language under certain circumstances.

This article discusses the ERISA and ACA requirements for non-English language assistance, including the threshold that the non-English-speaking employee population must reach in order to trigger those requirements. It concludes with the case for offering language assistance as a best practice even when the employer doesn't have enough non-English-speaking employees to make the assistance mandatory.

## 'Understood by the Average Plan Participant'

It is important to keep in mind the general ERISA requirement that summary plan descriptions (SPDs) and other disclosures be "written in a manner calculated to be understood by the average plan participant." [ERISA section 102\(a\)](#). This is a very important, yet subjective target, that can vary from one employee population to another.

Plan administrators communicating complicated benefit plan provisions must define or eliminate benefits jargon and have resources in place to actually convey information effectively to their specific employee population. This means taking into account factors like the educational level, sophistication, and yes, the English language fluency, of plan participants.

For example, what if the majority of your employees are engineers? You would correctly assume a high level of education. But what if most of those engineers recently arrived in the US from another country? You may have to assume that they have limited sophistication regarding US benefits systems and perhaps language difficulties as well. A "one-size-fits-all" SPD and other disclosures may not work for this population.

Did you know that the US does not have an official language? While English is the standard language used in most workplace communications, it may not be the language in which workers have sufficient comprehension. The [US Census Bureau, 2019 American Community Survey](#) shows that 22% of the population speaks a language other than English in their homes, and that 8% of the population speaks English "less than well."

While Spanish was by far the most prevalent non-English language spoken at home, other languages such as Chinese, French, Tagalog, Vietnamese, Arabic, Korean, and German were reported at significant levels. Language barriers must be taken into account when "calculating" whether a plan's average participant can understand the communications they are receiving.

What is effective benefits communication for non-native English speakers? The Department of Labor (DOL) provides useful insight in recent guidance on best practices for finding missing participants. One of the stated [communication strategies](#) specifies "offering non-English language assistance when and where appropriate."

While this guidance was issued in the context of finding and notifying missing participants, it is also important insight into what the DOL considers effective communication generally. Note that the DOL has provided certain model notices in Spanish as a resource to employers. For example, Spanish language versions of several required health plan notices can be found on their webpage covering [health plans](#).

## Specific ERISA Requirements

ERISA does not require that SPDs and other disclosures be provided in any language other than English. However, DOL regulations require that, where a plan covers a large enough population of participants who are only literate in the same non-English language, assistance in that non-English language must be offered. [DOL Regulations Section 2520.102-2\(c\)](#).

Some examples of such assistance would be including an interpreter in a participant meeting to help the participant understand and complete forms with the administrator, or having someone available to interpret on the phone when a non-English speaker calls with questions. While this may seem complicated, there are many companies that provide professional interpreting services on a subscription basis that are on call by telephone. This requirement applies in the following situations:

- Plans covering 100 or more participants must provide language assistance if the lesser of 10% of participants, or 500 participants—or more—are literate only in the same language
- Plans covering fewer than 100 participants must provide language assistance if 25% or more of the participants are literate only in the same language

A statement must be provided, either at the beginning of the document or on the cover, in the applicable non-English language, offering language assistance and explaining the procedures that individuals must follow to obtain the assistance. Sample language from the regulations—which must be in the applicable non-English language—below:

This booklet contains a summary in English of your plan rights and benefits under Employer A Pension Plan. If you have difficulty understanding any part of this booklet, contact Mr. John Doe, the plan administrator, at his office in Room 123, 456 Main St., Anywhere City, State 20001. Office hours are from 8:30 A.M. to 5:00 P.M. Monday through Friday. You may also call the plan administrator's office at (202) 555-2345 for assistance.

## ACA Requirements

Another law in the employee benefits sphere that has specific language requirements is the ACA. The ACA requires that certain group health plan materials be provided in a “culturally and linguistically appropriate manner.” The group health plan materials generated under the ACA include the summary of benefits and coverage (SBC) and appeal notices under the enhanced group health plan claims procedures.

The rules generally provide that in specified counties of the US, plans and insurers must provide interpretive services and written translations upon request, in certain non-English languages. The “applicable counties” are those in which at least 10% of the population residing in the county is literate only in the same non-English language. This determination is based on US Census data and includes four languages: Spanish, Chinese, Tagalog, and Navajo.

The list of applicable counties can be found on the Centers for Medicare and Medicaid (CMS) website on their Fact Sheets & Frequently Asked Questions (FAQs) [page](#) under the Summary of Benefits and Coverage and Uniform Glossary section. While this list is intended to be updated annually, the most recent [list](#) posted on the website is from January 2016. Even employers that have participants who live outside these counties may wish to offer translation and interpretive services as a means to ensure actual communication is achieved.

### **SBCs**

SBCs sent to addresses in an applicable county must include a statement clearly indicating how to access the language services provided by the plan (or insurer). This statement should be included on the page of the SBC with the “Your Rights to Continue Coverage” and “Your Grievance and Appeals Rights” sections.

Written translations of the SBC must be provided upon request in the required non-English languages. In order to assist with compliance with this language requirement, written translations of the SBC template and uniform glossary in the four applicable languages are available on the CMS [website](#), along with an oral translation—in MP3 format—in Navajo.

### **Claims Notices**

Claims notices sent to addresses in an applicable county must include a statement, prominently displayed in the non-English language, clearly indicating how to access the language services provided by the plan or insurer. Sample language,

in each of the four languages, appears in the DOL's model claims determination notices at [Internal Claims and Appeals and External Review](#).

Oral language services—such as a telephone customer assistance hotline—must be provided that include answering questions in any applicable non-English language and assistance with filing claims and appeals—including external review—in any applicable non-English language. Upon request, a notice in any applicable non-English language must be provided.

## Best Practices

Employers that have non-English speaking workers in numbers that do not trigger the ERISA and/or the ACA requirements may still wish to offer language assistance to these employees. This is obviously a good strategy where there may be doubt about whether the exact number of non-English-literate employees is known.

But even if not required, it is still a best practice, as a misunderstanding can result in lost enrollment and coverage opportunities, low employee participation and morale, as well as avoidable errors that require potentially costly corrections. Establishing a workplace culture that is aware of, and responsive to, the language needs of its employees ensures clear communication, positive employee relations, and sets a procedure in place for future growth of a diverse population.