Franconia Insurance & Financial Services
KEYSTONE

The ERISA Electronic Delivery Safe Harbor

Is the intended recipient an employee or someone else?

e.g. a retiree, on COBRA, etc.

EMPLOYEE

Do you provide them with daily, work-related computer access?

YES

Does use of the computer allow them to perform duties integral to their job?

NO

YES

Work-related access

NON-EMPLOYEE

NO

Did this person AFFIRMATIVELY CONSENT in a manner that reasonably demonstrated their ability to access the electronic information?

NO

YES

PRIOR to consenting, were they provided a clear and conspicuous statement that included all of the items required by the safe harbor?

NO

YES

Did they provide the email address to be used?

NO

YES

Have they since withdrawn their consent?

YES

NO

Consent

The Safe Harbor Does NOT Apply to this Person

Providing the document electronically will NOT relieve the Plan Administrator's burden of proof that their methods were reasonably designed to assure actual receipt.

The ERISA Electronic Safe Harbor APPLIES to this Person!

Providing the documents using one of the electronic methods, as prescribed, will be deemed "reasonably calculated to ensure actual receipt" by the Department of Labor (DOL).

WARNING: This safe harbor does NOT apply to W-2s, 1095s, or HIPAA Breach Notices

Recommended Process for POSTING DISCLOSURES on Internal Website Portals

1. Obtain **written consent** for electronic delivery (only needed for those who do not meet work-related computer access standards)
2. Send **Notice of Availability** to those covered by the safe harbor (meaning snail mail/hand deliver to all the others)
3. **Post the plan documents, notices and disclosures** on your internal website (and leave them up for ongoing access)
4. **Monitor email account** for bounce-backs, email address changes, withdrawals of consent, requests for paper copies, etc.
5. **Keep record of your actions** for eight years from the time of distribution (in case of an audit, participant lawsuit, etc.)