

The Hidden MEWA Risk Employers Need to Understand

“Can we offer group health plan coverage to our 1099 contractors?”

On the surface, it sounds simple. Maybe the contractor works full-time. Maybe they have supported the company for years. Maybe they feel like part of the team. Maybe the employer wants to be generous and offer access to the same health benefits available to employees.

But group health plan eligibility is much more than a simple HR decision. It is a compliance one.

When an employer allows independent contractors to participate in a group health plan, the employer may create a much bigger issue than intended. In some cases, that arrangement can trigger Multiple Employer Welfare Arrangement, or MEWA, concerns under federal law¹

START WITH THE BASICS: W-2 EMPLOYEES AND 1099 CONTRACTORS ARE NOT THE SAME

Group health plans are generally designed for common law employees. These are typically W-2 employees on the employer's payroll.

A 1099 contractor is different. Independent contractors are generally self-employed individuals or separate business entities. They are not treated as employees for tax and employment purposes. That distinction matters when we are talking about eligibility for employer-sponsored benefits.

Sometimes an employer may look at a long-term contractor and think, “They work with us every day, so why can't they be on the plan?”

The answer is that benefits eligibility is not based only on how often someone works with the company. It is based on the legal relationship between the individual and the employer, the plan document, carrier rules, tax treatment, and applicable federal and state requirements.

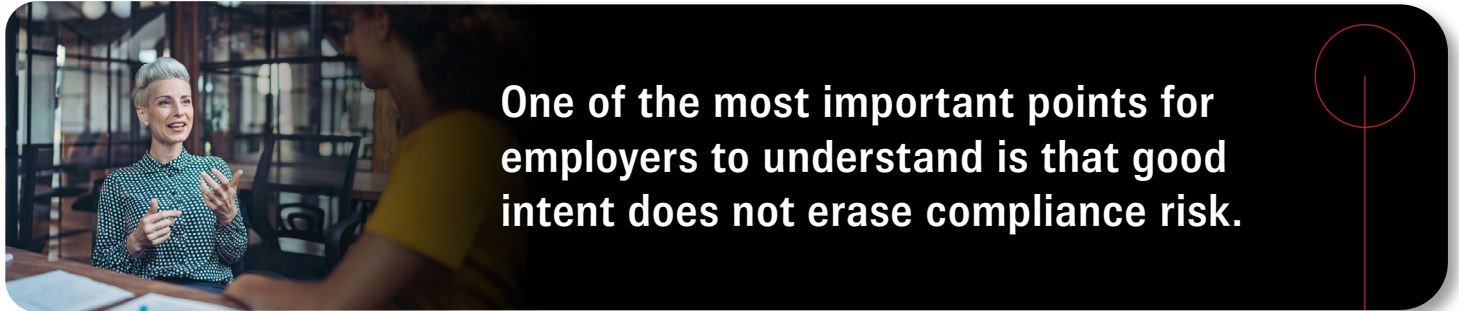
A MEWA generally involves an arrangement that provides welfare benefits to employees of two or more employers. That can include medical benefits.²



HOW MEWA RISK CAN COME INTO PLAY

Here is where the 1099 issue gets tricky. If a contractor is treated as self-employed, that contractor may be viewed as a separate employer. Once that contractor is added to the group health plan, the plan may no longer be covering only one employer's employees. It may be covering employees of more than one employer. That can trigger MEWA classification.

And once a plan is treated as a MEWA, the compliance obligations can change quickly. MEWAs can be subject to additional federal reporting, Department of Labor oversight, and state insurance regulation.³ The employer may have created that risk without realizing it.



One of the most important points for employers to understand is that good intent does not erase compliance risk.

EMPLOYER INTENT DOES NOT SOLVE THE ISSUE

MEWA concerns can arise even when the employer did not mean to create a MEWA. The issue can also apply regardless of employer size, whether the plan is fully insured or self-funded, and whether the contractor works full time, works exclusively for the company, or has been part of the business for years.

That is why the “but they feel like an employee” argument can be dangerous. If they are being treated as a contractor, the benefits eligibility analysis needs to match that classification.

WHY THIS MATTERS FOR BROKERS

This is exactly the kind of issue that can hide in plain sight. Employers may not bring it up as a compliance question. They may bring it up during renewal, onboarding, recruiting, or a conversation about keeping a valued contractor. They may ask if it is possible to add a contractor to the health plan and assume it is a simple yes or no.

You do not need to provide legal advice, and you should not. But you can help the employer understand that contractor eligibility is not something to handle informally. It should be reviewed with the plan document, carrier, compliance resources, and legal counsel when appropriate.

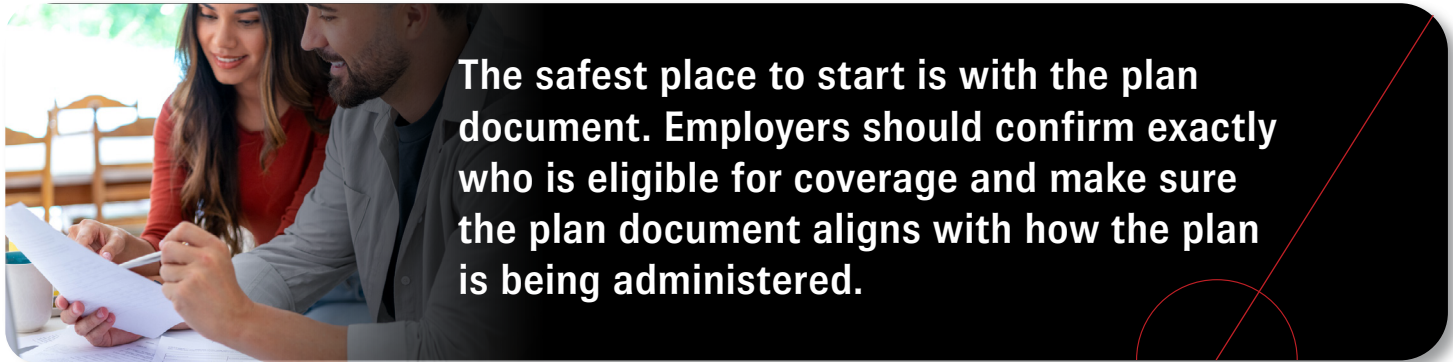


A simple eligibility exception can create reporting obligations, state regulatory exposure, and fiduciary risk.

POTENTIAL FEDERAL AND STATE CONSEQUENCES

If a plan becomes a MEWA, the employer may face federal requirements that did not apply before. That can include Department of Labor oversight, annual Form M-1 filing requirements, Form 5500 filing considerations, audit exposure, and increased fiduciary scrutiny.⁴

State consequences can also be significant. Depending on the arrangement and state law, a MEWA may be subject to state insurance regulation. In some cases, that can involve licensure or approval requirements, penalties, cease-and-desist orders, or even forced plan termination. That is a lot of risk for what may have started as a simple request to help a contractor access health coverage.



The safest place to start is with the plan document. Employers should confirm exactly who is eligible for coverage and make sure the plan document aligns with how the plan is being administered.

In most cases, eligibility should be limited to W-2 employees. Contractors should be clearly excluded from the group health plan unless legal counsel and all applicable parties have reviewed the arrangement and confirmed it is permissible.

Employers should also audit enrollment files regularly. It is not enough to have correct eligibility language if the plan is being administered differently in practice. A contractor added by mistake can still create issues.

Here are a few questions worth asking:

- + Does the plan document clearly limit eligibility to employees?
- + Are 1099 contractors excluded from coverage?
- + Has anyone reviewed current enrollments for non-employees?
- + Are HR, payroll, and benefits administration teams using the same eligibility rules?
- + Has the employer considered separate individual options for contractors instead of group plan eligibility?
- + Has legal counsel reviewed any exception requests?

The goal is not to make benefits harder. The goal is to make sure eligibility rules are being followed before a small exception becomes a larger compliance concern.

A BETTER PATH FOR CONTRACTOR SUPPORT

Depending on the situation, contractors may have access to individual health coverage, marketplace coverage, professional association options, spouse coverage, Medicare, or other individual solutions. Those options should be kept separate from the employer's group health plan unless the employer has received appropriate guidance.

The employer can support contractors by providing general information, directing them to appropriate resources, or helping them understand where to explore coverage. But offering access to the employer's group health plan can create risk that is not worth overlooking.



Eligibility rules are legal requirements, not administrative preferences.

BOTTOM LINE

Adding 1099 contractors to a group health plan may feel like a helpful or reasonable decision, especially when those contractors are closely connected to the business. But that decision can trigger MEWA concerns, additional reporting, regulatory oversight, and potential penalties.

Before an employer makes an exception, pause and review the issue carefully.

CRC Benefits helps brokers bring clarity to complex compliance questions, so you can help clients identify risk, ask better questions, and make more informed benefits decisions before problems surface.

CONTRIBUTOR

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END NOTES

1. U.S. Department of Labor, Employee Benefits Security Administration, Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, revised April 2022.
2. U.S. Department of Labor, Employee Benefits Security Administration, Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, "What is a multiple employer welfare arrangement?"
3. U.S. Department of Labor, Employee Benefits Security Administration, Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, sections on ERISA and state regulation of MEWAs.
4. U.S. Department of Labor, Employee Benefits Security Administration, Multiple Employer Welfare Arrangements under the Employee Retirement Income Security Act (ERISA): A Guide to Federal and State Regulation, "Form M-1 Filing Requirement for MEWAs"; U.S. Department of Labor, Employee Benefits Security Administration, "Forms and Filing Instructions