BeneSys™ Navigator

TECH NEWS

Using AI comes with risks. Offset them with these 7 best practices

by Jeff Spires, CIO

Jeff Spires is chief information officer at BeneSys Inc.

The popularity and newsworthiness of artificial intelligence are at an all-time high. Many organizations are working to determine not only the appropriate use cases for AI but also the risks to data privacy, security and compliance. And while commonly available AI tools can be beneficial, using them requires balancing the advantages with those potential risks. Below we offer a key warning, some cautionary measures about public AI platforms, and seven best practices for using private AI tools within your organization.

Warning: Verify AI-generated results

The use of AI can give the appearance that you are working with an alien or the "Computer" on the Star Trek *Enterprise*. AI is not thinking and is not capable of understanding cultural or human language. An AI tool with access to the public internet or to a vast amount of data will be able to weight and present information quickly and in a well-written output. However, this can give the user a false sense of security about the accuracy of the results because an AI tool only knows what it has been able to consume or has been trained to learn; its results are only as good as the data it has access to. Therefore, the No. 1 warning to any user is that you must verify the content an AI tool generates. Do not take it at face value. AI output can contain misinformation and embedded biases, and it can even be completely wrong. Again, any AI user must always verify what the AI is telling them!

Proceed with caution

The most popular AI systems are those available to the public, like ChatGPT, Claude and Bard. Before using these tools, you must review their terms of service, as it is likely that anything you

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upload to these sites automatically becomes public and accessible to future AI inquiries by other users. Be sure to take into account the security measures on these sites and understand the confidentiality of the information in your user account. In general, using public AI tools should be done with great caution; if your work includes private and confidential information, you should seek feedback from industry experts and legal counsel before using public AI platforms.

Follow AI best practices

The good news about AI is that it can be a powerful tool and that public AI capabilities are

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BeneSys aces IT security test

BeneSys recently completed our 2023 external security penetration test with very successful results. Conducted by an outside company, this annual testing is part of our ongoing effort to protect against hackers and other potential threats. This year's test found only four low-risk issues and no critical, high-risk or medium-risk issues. We're proud of the work our IT staff does to keep our client data secure.

now being made available for use in a controlled environment where organizations can manage them. Here are seven best practices for effectively implementing AI in your organization:

1. **Prioritize data security and privacy.** Implement strong data encryption, access controls, and compliance with relevant regulations, such as HIPAA and CPRA (California Privacy Rights Act).
2. **Define clear objectives.** Start by identifying specific business goals and objectives that AI can help address. Ensure that AI aligns with your organization's strategic priorities.
3. **Build a cross-functional team.** Assemble a multidisciplinary team that includes data scientists, domain experts, IT professionals and business stakeholders. Collaboration is crucial for successful AI implementation.
4. **Verify data quality and accessibility.** Ensure that your data is clean, well-structured and readily accessible. High-quality data is a fundamental requirement for training and deploying AI models.
5. **Consider legal and ethical guidelines.** Adhere to legal and ethical guidelines for AI usage, especially when handling sensitive data. Consult with legal experts to navigate regulatory compliance.
6. **Manage the risks.** Identify potential risks and develop contingency plans to address them. Proactive risk management is essential for a successful AI implementation.
7. **Establish strong data governance practices** to maintain data quality, consistency and compliance. Define roles and responsibilities for data management. Consider the intellectual property implications of AI projects, especially when using AI to create products or processes.

When used correctly, AI can be a powerful tool that can help individuals and organizations be more productive. Like all technologies, AI should be researched, vetted and implemented not on a whim, but with a thoughtful plan that includes input from a multidisciplinary team. •

FROM THE CEO

People are at the heart of our business

by Ed Wolyniec, CEO

Thank you to everyone who completed our annual Client Satisfaction Survey. We use the results — including your comments — to evaluate areas where we can improve the trustee and member experience. Your input is important to us, and we appreciate your time.

For a company that uses a significant amount of technology to serve your trust funds and your members, BeneSys is still very much a people-driven business. As you read through this edition of the *Navigator*, you'll notice that people are at the heart of every story.

In our cover article on artificial intelligence, our CIO Jeff Spires notes that to get the most out of AI tools, you first need the input of a cross-functional team of people. In his compliance column, our General Counsel Tom Shaevsky

reminds you and your members to keep your plan beneficiary information up to date in order to protect the important people in your lives. In our client services story, we introduce the new look of BenefitDriven, a change inspired by the people behind our signature software solution for the people like you who use it. And in our employee spotlight, we highlight one of our valued plan managers, who thrives on helping the people she serves.

It doesn't get more people-driven than that.

It's a privilege to be your TPA and to be a trusted part of your team. All of us at BeneSys wish you and yours a wonderful, safe and happy holiday season! •

COMPLIANCE

New Year's resolution: Update beneficiary forms

by Tom Shaevsky, General Counsel

Tom Shaevsky is general counsel at BeneSys Inc. He has spent nearly 25 years practicing ERISA/employee benefits law.

With the new year approaching, it is an appropriate time to reflect on all the changes in our personal lives during the past year (or two, or three) and consider how they may impact estate planning. Encourage your plan Participants, as well as yourself, to focus on how any changes in family circumstances — such as marriage, divorce, change in domestic partner, birth or adoption of a child, or death of a family member — may impact whom to designate as a beneficiary.

Naming a beneficiary for a Participant's interest in a retirement plan may top the list of potential changes to make. Some plans may offer additional death benefits that allow the Participant to designate a beneficiary. Beneficiaries under a life insurance plan subject to ERISA, as well as under an individually owned life insurance policy, also should be updated as circumstances change.

It's important that Participants complete the plan-issued beneficiary designation form. This form is kept on file with the plan administrator, and most plans provide that it, rather than a decedent's will, is the controlling legal document. In other words, a will naming an individual as a beneficiary of the decedent's retirement plan account is unlikely to be honored by a plan.

Unmarried Participants: For an unmarried Participant with no validly completed plan-issued beneficiary designation form, plans can vary in terms of the order of default beneficiaries. Some plans may simply list the Participant's estate as the default beneficiary. Other plans may list parents, children, siblings, etc. in varying order and then finally the estate if all these relatives have predeceased the Participant. These provisions can be difficult to administer — how does the plan truly know if all the children or all the siblings have identified themselves to the plan? For the sake of the plan administrator, and certainly to honor the Participant's wishes, Participants should complete designation forms identifying both primary and contingent beneficiaries.

Married Participants: Spouses are automatically the beneficiaries under ERISA retirement plans pursuant to the 1984 Retirement Equity Act that amended the Employee Retirement Income Security Act. Exceptions can apply though: Plans can require that a Participant be married for up to one year prior to the death of a spouse to automatically take advantage of surviving-spouse benefits, so in these cases it is important for the Participant to affirmatively designate the spouse as the beneficiary following the marriage (assuming the Participant desires the new spouse to be the beneficiary).

Divorced Participants: Legal complications can arise if a Participant designates the spouse as the beneficiary, then subsequently divorces and fails to complete a new beneficiary form post-divorce. Did the Participant intend for the now ex-spouse to remain the beneficiary? Or did the Participant simply assume (possibly incorrectly) that the divorce automatically revokes the pre-divorce naming of the spousal beneficiary? Some plans do provide such automatic revocation, other plans do not, and still others do not address the issue at all.

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Change in marital status? Notify your plan

Aside from beneficiary designations, it is important for Participants in plans — especially certain defined benefit pension plans — to notify the plan administrator of a change in marital status. Some defined benefit pension plans have a "pop-up" benefit: If a married Participant begins receiving retirement benefits but then the spouse predeceases the Participant, the Participant's benefit may increase to reflect that there is no longer a beneficiary. In the context of group health/vision/dental plans, a plan should be notified of a divorce so the ex-spouse's COBRA rights can be activated — and so the plan can cease providing current spousal benefits to the now former spouse.

Even if the divorce decree provides that the spouse waives the right to the Participant's retirement benefits upon the Participant's death, the retirement plan (or life insurance plan) may not be required to honor the divorce decree — and instead the plan may only be required to honor the plan-issued beneficiary designation form on file with the plan administrator. The U.S. Supreme Court so held in a 2009 decision in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, a classic battle between the decedent's former spouse and the decedent's estate regarding retirement plan benefits.

State law, including state life insurance law, may take a position as to whether waiver of spousal beneficiary rights in a divorce decree is enforceable. Typically courts determine that these laws are preempted by ERISA (the U.S. Supreme Court so held in a 2001 decision in *Egelhoff v. Egelhoff*). Nevertheless, case law pertaining to ERISA preemption is constantly evolving. To avoid legal disputes between an ex-spouse and other potential heirs following a Participant's death, the wisest action is for the Participant to complete new beneficiary forms following the finalization of the divorce judgment (with a copy of the divorce judgment provided to the plan administrator for future reference).

Prenuptial waivers: Prenuptial agreements often cannot be honored by retirement plans. So, a spouse's waiver of retirement benefits would have to occur after the Participant marries the spouse, and both the Participant and spouse complete plan-provided spousal waiver forms (with the spouse's signature witnessed by a plan representative or notary public).

Remember, naming beneficiaries is key to making sure that your hard-earned retirement funds and other assets will pass on to the right recipients. The coming new year is an ideal time for you and your plan Participants to review current selections and make any necessary changes to ensure that your beneficiaries will be the ones you intended. •

This article is provided for informational purposes only and does not constitute legal advice. Readers should consult with their own legal counsel before acting on any of the information presented.

Plan for your non-ERISA assets too

- **For IRAs and Roth IRAs,** which are not subject to ERISA, designate a beneficiary and keep that information up to date. (State laws may play a role in the ability to designate a beneficiary other than a spouse.)
- **For 529 college savings plans,** consider who the successor owner should be.
- **For safety deposit boxes,** consider who knows the location of the key, and who is authorized to access the box.
- **For your overall estate,** be sure you have a will. Many years ago, I overheard a law school classmate tell an acquaintance, "If you die without a will, the state will write one for you." While that might sound simple and cost-free, most practitioners would recommend that you proactively choose who will benefit from your estate by creating a will. Otherwise, the application of state intestate laws may result in conclusions you might not expect or want. ("Long lost" or estranged relatives may suddenly benefit from the fruits of your labor.)

Recognizing exceptional BeneSys employees

EMPLOYEE SPOTLIGHT: Soyara Guzman, plan management

Who: Soyara Guzman, plan manager and office manager in Livermore, California.

Why she stands out: "Soyara's contributions to her team and clients are invaluable," says BeneSys President Bonnie Maraia. "Her commitment to excellence and high standards have set a positive example for us all."

History at BeneSys: Soyara joined in 2008 as a clerical assistant. "Within a few months, I was recruited by the plan management team, where I have been dedicated to serving client needs through several roles, currently as a plan manager/office manager."

The most rewarding part of working in plan management: "Helping others. I am passionate about being able to assist clients and members and make their day-to-day lives better. It is especially rewarding to hear from members that with our assistance, they were able to get out of distraught situations."

Three words that describe her: Dedicated. Dependable. Trustworthy. •

BenefitDriven introduces a new look

After many years with our signature green and gold logo, BenefitDriven debuted a new look in October at the International Foundation of Employee Benefit Plans' 69th annual Employee Benefits Conference in Boston.

"BenefitDriven's refreshed branding, rolling out over the next few months, is a reflection of the ambition and commitment we see across our team to deliver exceptional technology and service to our clients," says Blake Holderread, vice president of marketing at Beacon Technologies Group, who oversaw the rebranding. "It also celebrates BenefitDriven's journey from integrating Beacon's SpyGlass claims-processing system to becoming a comprehensive benefit administration solution for the Taft-Hartley market."

Blake Holderread (left), vice president of marketing at Beacon Technologies Group, and BeneSys CEO Ed Wolyniec usher in the new BenefitDriven brand at the IFEBP conference in Boston in October.

Though our look may have changed, BenefitDriven's commitment to clients has not. "We continue to provide the same high level of service and professionalism our clients have come to expect," Blake says.

If you're interested in learning more about the new logo, including the process behind its creation, email us at marketing@benefitdriven.com. •

ABOUT BENESYS

BeneSys has been providing Taft-Hartley trust fund administration and IT services since 1979. Our dedicated specialists understand the nuances of Taft-Hartley benefit plans, and our software system, BenefitDriven, is designed to give our clients and their plan Participants the most efficient tools for self-administering trust fund accounts.

CORPORATE & OPERATIONAL HEADQUARTERS
700 Tower Drive, Suite 300
Troy, MI 48098-2808
248-813-9800

WEST COAST HEADQUARTERS
7180 Koll Center Parkway, Suite 200
Pleasanton, CA 94566-3184
925-398-7060

BUSINESS DEVELOPMENT
National Sales Director
Thomas Lally: 401-378-1299
thomas.lally@benesys.com

SaaS Inquiries
Blake Holderread: 217-801-8911
bholderread@beaconspyglass.com

www.BeneSys.com

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