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Will Your Plan Have to Follow the New Disability Claims Procedures on April 1?

U.S. Department of Labor final regulations for disability claims under the Employee Retirement Income Security Act (ERISA) plans become effective on April 1, 2018. Plan sponsors should do two things: (1) review plans that provide disability benefits to determine which plans are subject to the new requirements, and (2) revise disability claims procedures accordingly.

Plans Subject to the New Rules

The new rules apply to any ERISA plan which provides that a benefit will be paid, or that a benefit will vest, upon a showing of disability, unless the plan relies on a disability determination of the Social Security Administration, a disability insurer or other independent third party (i.e., not the plan administrator or its delegate). Affected plans can include welfare plans (including “wrap” plans with short-term disability and long-term disability benefits), certain pension plans, and 401(k), 403(b), and non-qualified “top hat” deferred compensation plans, where a participant’s disability is determined by the plan.

Key Changes in the New Rules

The rules provide several new requirements that plan administrators must follow in deciding disability claims, including but not limited to the following changes:

Ensure the independence of decision-makers.

Require a discussion of the basis for any decisions.

Provide claimants access to the entire claims file, including any evidence or testimony.

Provide any new or additional evidence before a denial of a disability claim is decided on appeal.

Include in a notice of any negative decision on appeal any contractual limitations period to bring an action in court and the specific calendar date on which the period ends.

If the plan administrator or its delegate fails to comply with the new rules for a disability claim filed on or after April 1, the claimant will be deemed to have exhausted available administrative remedies under the plan, allowing the claimant to bring a lawsuit based on the plan's failure to provide reasonable claims procedures.

What This Means to You

Any plan for which disability is determined by the plan administrator or its delegate, and not by the Social Security Administration or a disability insurer, must be administered in accordance with the new rules beginning April 1, 2018, and the plan's claims procedures must comply in form with the new rules. Although a plan could be amended so claims procedures comply with the new rules, the new rules do not require a plan amendment. Alternatively, for many plans, the plan administrator may adopt a supplement to the plan's claims procedures that conforms to the final regulations, without amending the plan. If the plan is to be amended, a "snap-on" amendment can be adopted in the near term. Summary plan descriptions should also be revised to conform the disability claims procedures to the new rules.

Contact Us

If you would like more information about the final regulations or would like us to review your plans, to prepare plan amendments and employee communications, please contact an attorney in Husch Blackwell's Employee Benefits & Executive Compensation group.