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LEGAL UPDATES

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New Rules Provide for Extensions of Benefit Plan Compliance Deadlines

On April 29, 2020, the Employee Benefits Security Administration (EBSA), Department of Labor (DOL), Internal Revenue Service, and the Department of the Treasury (the Agencies) issued a final rule (Rule) regarding the extension of timeframes under ERISA and the Internal Revenue Code (Code). The Rule applies to group health plans, disability and welfare plans, retirement plans, and to deadlines with respect to participants and beneficiaries. The Rule goes into effect immediately upon the Rule's publication.

EBSA also issued Notice 2020-1 (Notice) that provides some relief to benefit plans, sponsors, and fiduciaries.

Final Rule

Due to the national emergency proclamation regarding COVID-19, the Agencies recognize that participants will be faced with problems with health coverage continuation and filing benefit claims. Accordingly, the Agencies have extended various timeframes to grant relief to participants and beneficiaries.

In particular, the Rule provides relief by extending certain deadlines by disregarding the "Outbreak Period." The Outbreak period is the period from March 1, 2020, until sixty (60) days after the announced end of the national emergency. As of the date of this writing, it is uncertain when the end of the national emergency will be announced.

Below is a summary of the various timeframes impacted by the Rule:

Issue	General Timeframe	Extended Timeframe
Special Enrollment for Group Health Plans	Request must be made within 30 days of the occurrence of the relevant event (or 60 days under CHIPRA)	
COBRA Election Notice for Plan Sponsors	Administrator must provide notice within 30 days following receipt of notice from employer, or if the administrator and the employer are the same, the administrator must provide notice to qualified beneficiaries within 44 days of the qualifying event.	
COBRA Election Period for Qualified Beneficiaries	Election must be made within 60 days following receipt of election notice.	Disregard any days that fall within the “Outbreak Period.”
Payment of COBRA Premiums by Qualified Beneficiaries	Premiums must be paid within 45 days after initial COBRA election; later premiums must be paid within 30 days from the first day of the coverage period.	
Notification of Qualifying Event or Determination of Disability by Participants	Covered persons need to notify the plan administrator within 60 days of certain qualifying events.	
Filing of Benefit Claims by Participants	Plan document/claims procedures set forth timing.	
Filing of Appeal of Adverse Benefit Determination by	Plan document/claims procedures set forth timing; cannot exceed 180 days for disability plans and 60 days for retirement and other health	

Participants	plans.	
Request for External Review, and Perfection of a Request, by Participants	Timing depends on whether the plan uses the Federal or State external review process; cannot exceed 4 months from receipt of adverse benefit determination if using the Federal review process.	

The Rule applies to all plan participants, beneficiaries, qualified beneficiaries, or claimants, regardless of their geographic location and regardless of whether such individual is impacted by COVID-19 in any manner.

The Agencies indicated that it may change these rules or extend the “Outbreak Period” for different geographic locations if the circumstances so dictate.

Department of Health and Human Services also indicates that it will adopt a temporary policy with similar consequences for non-Federal governmental group health plans and health insurance issues. In the meantime, plan sponsors of non-Federal governmental group health plans and health insurance issuers should proceed in a manner consistent with the Rule.

Significant Issues of Final Rule

The Rule presents some significant immediate issues and more issues are sure to arise in practice.

First, plan sponsors will need to closely track dates on which certain notices and events have occurred. They will then need to “keep open” the relevant period, which could require changes to software or systems and require HR departments to closely track these dates.

For example, if a qualified beneficiary would otherwise be required to elect COBRA coverage after March 1, 2020, but does not elect COBRA or pay any premiums, the Rule provides that the qualified beneficiary could elect COBRA and pay all premiums for retroactive coverage. If the Outbreak Period extends to July 1, 2020, for example, the qualified beneficiary would have until August 30, 2020, to elect COBRA and pay the premiums for coverage that could be retroactive to January of 2020. That would leave the plan (particularly a self-insured plan) susceptible to large claims during a period in which many employees are losing health coverage.

The Rule also impacts benefit claims and appeals and may extend the period in which participants may file a lawsuit.

EBSA Notice 2020-1

The Notice provides that plan sponsors and fiduciaries will not violate ERISA for failing to timely furnish a notice, disclosure, or document. The plan sponsor acts in good faith and furnishes such information “as soon as administratively practicable under the circumstances.” Sponsors are permitted to communicate these changes via including email, text messages, and access to websites, if the fiduciary believes the recipients have access to such methods of communication.

Thus, it is unclear whether the postponed timelines create a true “safe harbor” for plan sponsors and fiduciaries.

As to loans and distributions, if a failure to follow procedures is solely due to COVID-19, the administrator makes a good faith effort to comply with procedures, and the administrator makes a reasonable attempt to correct any deficiencies, the DOL will not treat such delay as a failure of ERISA. This relief does not apply, however, to spousal consents or other requirements under the Code.

Further, the DOL will not assert an ERISA violation for the increased loan amounts available under the CARES Act. Some commentators have worried about the “adequate security” and “reasonably equivalent basis” rules for the increased loan limits. However, these rules will not be enforced for loans available under the CARES Act.

As to participant contributions to retirement plans, the DOL is relaxing the standard to contribute contributions to the retirement plan within a certain time period. However, although the DOL may relax the standard, we would recommend that participant contributions be deposited to retirement plans as soon as possible to avoid potential claims from participants.

The DOL also relaxes the requirements for a blackout notice if the inability to provide such notice is outside of the control of the plan administrator.

Lastly, the DOL recommends that fiduciaries continue to act in the best interest of participants and beneficiaries during this time. Plan fiduciaries should make reasonable accommodations to prevent loss of benefits or delay in payments.

Conclusion

These extensions of timeframes are designed to help individuals during these unprecedented times. However, plan sponsors, administrators, and health insurance issuers will need to closely track dates and timeframes with respect to the benefit plans. Effectively, everything is put on “pause” during this time, except with respect to plan sponsors and fiduciaries, who may be required to comply with the original timeframes if they are able to do so.

Contact us

If you have further questions or require more information regarding this update, please contact David Eckhardt, Craig Kovarik or your Husch Blackwell attorney.

CARES Act, COVID-19 & Return-to-Work Guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.