



A Robinson+Cole Legal Update

Coronavirus (COVID-19)

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New EBSA Relief Notice Affects Extension of ERISA Claim Deadlines

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On February 26, 2021, the Employee Benefits Security Administration (EBSA) released [Notice 2021-01](#) (2021 Relief Notice) providing guidance to employers, claim administrators and fiduciaries of ERISA plans on the duration of the [COVID-19-related relief](#) set forth in a 2020 Notice that suspended, among other things, certain ERISA (Employee Retirement Income Security Act) claim-related deadlines (referred to herein as ERISA Relief).

Under the 2020 Notice, the ERISA Relief continues until sixty (60) days after the announced end of the COVID-19 National Emergency or such other date announced by the relevant Agency or Agencies in a future notification (the Outbreak Period). However, ERISA and the Internal Revenue Code provide that a deadline tolling period cannot exceed one year. One year measured from the start of the Outbreak Period on March 1, 2020 was February 28, 2021. With the COVID-19 crisis and National Emergency continuing past that date, there were many questions regarding when the Outbreak Period will expire and how the one-year statutory tolling limitation should be applied.

Up until February 26th, the Departments of Labor and Treasury had been silent on the application of this one-year limit. Now, however, the 2021 Relief Notice indicates that the one-year limit applies on an individual basis, and its application to individuals will depend on whether the event that triggers their deadline to file a claim, appeal, or take other action (Event) either: (i) occurred prior to March 1, 2020, with the deadline falling after March 1, 2020; (ii) occurred sometime between March 1, 2020 and February 28, 2021; or (iii) occurs on or after March 1, 2021.

Individuals with an Event Occurring Prior to March 1, 2020, Triggering a Deadline Falling After March 1, 2020

The end of the maximum one-year tolling period has implications for claimants who experienced an Event (e.g., an adverse claim determination) prior to March 1, 2020, thereby triggering a deadline for those individuals to take some action (such as file an administrative appeal). Although their time period in which to act started running prior to March 1, 2020, it was tolled from March 1, 2020 through February 28, 2021. Therefore, these claimants likely still have some time remaining to take action.

Example: Assume that Robert received an adverse claim determination on his disability claim on February 1, 2020. His deadline for filing an appeal would occur 180 days later, or July 30, 2020. As of March 1, 2020, when the Outbreak Period began, 29 days of that 180-day period had elapsed. It then was “paused” from

March 1, 2020 through February 28, 2021. Robert's time to appeal started running again as of March 1, 2021, leaving him with 151 days (until July 30, 2021) to submit his appeal.

For claimants like Robert whose Event occurred prior to March 1, 2020, and whose deadline to act had not already expired by that date, a simple way to determine their new deadline is to add one year to their original deadline.

Individuals with an Event Occurring Between March 1, 2020 and February 28, 2021

For those individuals who experienced an Event on or after the March 1, 2020 beginning of the National Emergency, the one-year limit will end on the earlier of (i) the end of the Outbreak Period or (ii) the expiration of the one-year tolling period that began on the date of the Event (the Individual Tolling Period).

Example: Let's assume that Suzanne receives an adverse claim determination on July 1, 2020. Like Robert, Suzanne ordinarily would have 180 days to appeal that adverse decision. Because July 1, 2020 is within the Outbreak Period, Suzanne's 180-day appeal period does not start to run until the earlier of the end of the Outbreak Period or the expiration of her one-year Individual Tolling Period. Suzanne's one-year Individual Tolling Period would end on June 30, 2021 (one year from the date she was notified of the adverse benefits decision). If the Outbreak Period does not end sooner, Suzanne's appeal period will begin running on July 1, 2021 and she will have until December 28, 2021 (180 days later) to submit her appeal. If, however, the Outbreak Period ends prior to June 30, 2021, her 180-day appeal period will begin running as of the date the Outbreak Period ends.

Individuals with an Event Occurring On or After March 1, 2021 and Before the End of the Outbreak Period

The 2021 Relief Notice indicates that those individuals who have a deadline-triggering Event on or after March 1, 2021, but before the end of the Outbreak Period, will be entitled to the same relief as others; in other words, ERISA-related deadlines will be delayed until the earlier of (i) the end of the Outbreak Period or (ii) the expiration of the one-year Individual Tolling Period.

Using the prior example, if Suzanne's benefit claim is denied on April 15, 2021, while the National Emergency is still in effect and the Outbreak Period has not yet ended, her 180-day appeal period does not start to run until the end of the Outbreak Period (60 days after the National Emergency is over) or the expiration of her one-year Individual Tolling Period, whichever occurs earlier. Her one-year Individual Tolling Period would end on April 14, 2022 (one year from the date she was notified of the adverse benefits decision). If the Outbreak Period does not end sooner, Suzanne's appeal period will begin running on April 15, 2022, and she would have until October 12, 2022 (180 days later) to file her appeal. On the other hand, if the Outbreak Period ends prior to April 15, 2022, Suzanne's 180-day appeal period will begin running as of the date the Outbreak Period ends.

Also, absent further guidance from the government, once the National Emergency is declared over and the Outbreak Period ends 60 days later, any Events occurring after the end of the Outbreak Period would be subject to the usual time periods set forth in the claim regulations.

Other Issues

Note that ERISA Relief and the one-year tolling period affect not only claim submission, appeal, and external review deadlines, but also other plan-related deadlines, including COBRA (the Consolidated Omnibus Reconciliation Act) election and premium payment deadlines as well as HIPAA special enrollment deadlines. Further, pursuant to a separate relief notice issued last spring, an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for failure to furnish in a timely manner a notice, disclosure, or document that must be furnished during the Outbreak Period, provided the plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as it is administratively practicable under the circumstances.

The 2021 Relief Notice states that employers and plan fiduciaries would be well advised to act in the interest of workers and their families, such as making reasonable accommodations to prevent the loss or

undue delay in payment of benefits and taking steps to minimize the possibility of individuals losing benefits because of a failure to comply with pre-established deadlines. Plan sponsors and claim administrators may want to consider whether to provide additional information regarding deadlines to those claimants who experienced an Event during the time period between March 1, 2020 and February 28, 2021, or who had a deadline that fell during that period. Going forward, while the Outbreak Period continues, administrators should also consider the implications of the 2021 Relief Notice on appeal deadlines for those whose benefit claims are denied. Claims analysts and appeal specialists should be aware of the pandemic-related extensions and understand that claims and appeals may be timely even if they are submitted long after the usual deadlines ordinarily would have passed. Plan sponsors and claim administrators are encouraged to seek competent counsel with respect to these issues.

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