

Employee Benefits Alert

COVID-19 UPDATE: DOL and IRS Announce Disaster Relief Related to Employee Benefit Plans

By Paul M. Yenerall

The DOL and the IRS jointly have provided in a final rule that all group health plans, disability and other employee welfare benefit plans MUST disregard the period from March 1, 2020 until 60 days after the end of the declared National Emergency related to the COVID-19 outbreak or such other date as provided by the agencies in future guidance (referred to in the final rule as the "Outbreak Period") for purposes of the following periods and dates:

- The 30-day period (or 60-day period, if applicable) to request special enrollment
- The 60-day election period for COBRA continuation coverage
- The date for making COBRA premium payments
- The date for individuals to notify the plan of a qualifying event or determination of disability
- The date within which individuals may file a benefit claim under the plan's claim procedures
- The date within which claimants may file an appeal of an adverse benefit determination under the plan's claim procedures
- The date within which claimants may file a request for an external review after receipt of an adverse benefit determination
- The date within which a claimant may file information to perfect a request for external review
- The date for providing a COBRA election notice

This means that during the Outbreak Period all these dates and time limits are extended for payments due or events occurring during the Outbreak Period. For example, an individual who experiences a qualifying event in April will have until 60 days after the end of the Outbreak Period within which to elect COBRA. Similarly, any COBRA premiums due during the Outbreak Period will not be considered delinquent if the COBRA premiums are paid within 30 days following the end of the Outbreak Period. This means that COBRA premium payments that are due for March, April and May, at the very least at this point, are not required to be paid until 30 days after the end of the Outbreak Period. This will prove to be especially difficult in the administration of COBRA continuation coverage.

In a separate notice (EBSA Disaster Relief Notice 2020-01), the Department of Labor and the Department of Treasury, in consultation with HHS, provided relief for various deadlines and requirements under ERISA and the Code. In accordance with this guidance, an employee benefit plan and the responsible plan fiduciary will not be in violation of ERISA for failure to timely furnish a notice, disclosure or document that must be otherwise furnished during the Outbreak Period if the plan and responsible fiduciary act in good faith and furnish the notice, disclosure

or document as soon as administratively practical under the circumstances. Good faith acts include use of electronic alternative means of communicating with plan participants and beneficiaries who the plan fiduciary reasonably believes to have effective access to electronic means of communication including email, text messages and continuous access websites.

In addition, if an employee benefit plan fails to follow procedural requirements for plan loans or distributions, the Department will not treat it as a failure if (i) the failure is solely attributable to the COVID 19 outbreak, (ii) the plan administrator makes a good faith, diligent effort under the circumstances to comply with those requirements and (iii) the plan administrator makes a reasonable attempt to correct any procedural deficiencies as soon as administratively practical. Also, the Department announced that it will not take enforcement action with respect to a temporary delay in forwarding plan loan repayments or participant contributions to the plan so long as the employer and service providers act reasonably prudently and in the interest of employees to comply as soon as administratively practical under the circumstances. Finally, certain other relief provisions are provided with respect to CARES Act loans and distributions, blackout notices and ERISA fiduciary compliance.

This Employee Benefits Alert is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact author, Paul M. Yenerall at 412.566.2035 or pyenerall@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.