



U.S. Department of Labor Issues COVID-19 Relief for Employee Benefit Plans

April 30, 2020

On **April 28, 2020**, the U.S. Department of Labor (DOL) released guidance for employee benefit plans aimed at providing relief to plan participants and qualified beneficiaries during the COVID-19 national health emergency. Specifically, the DOL's goal is to minimize the possibility of individuals losing benefits due to a failure to adhere to certain timeframes established under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC). Accordingly, these timeframes are temporarily extended effective immediately.

Applicable Plans

The temporary extension of timeframes under ERISA and IRC applies to group health plans, disability, and other welfare plans, including Health FSAs and HRAs. Some of the extensions may not apply to plans that are exempt from ERISA, such as state and local government plans and church plans.

Notably, the Department of Health and Human Services has indicated that it may adopt similar measures under the Public Health Service Act, and it encourages plan sponsors of non-Federal governmental group health plans and health insurance issuers to operate in a manner consistent with this DOL-provided relief.

Extension of Timeframes

Plan sponsors are required to disregard the period of time from March 1, 2020 until 60 days following the announced end of the COVID-19 national health emergency when determining the following periods.

COBRA Timeframes.

- The 60-day election period for a qualified beneficiary to elect COBRA continuation coverage.
- The date for qualified beneficiaries to make COBRA premium payments;
- The date for individuals to notify the plan of a qualifying event or determination of disability; and
- The time period within which the plan sponsor must provide a COBRA election notice to qualified beneficiaries (this period is generally no more than 44 days following the occurrence of the qualifying event).

HIPAA Special Enrollment Timeframes.

- The time period for an employee to request a special enrollment (this period is generally 30 days from the occurrence of the qualifying event, but is 60 days where the qualifying event relates to eligibility under a state's Medicaid plan or CHIP).

Claims Procedure and External Review Process Timeframes.

- The date within which individuals may file a benefit claim under the plan's claims procedures;
- The date within which claimants may file a claims appeal; and
- The date within which a claimant may file a request for an external review or file information to perfect a request for external review.

Employer Action

In response to this DOL guidance, employer-sponsors should immediately identify which of their group health and welfare plans are affected. Many employer-sponsors will be able to coordinate with third parties to implement these temporary timeframe extensions, such as insurance carriers, claims administrators, and COBRA administrators, and should confirm with these third parties that the timeframe extensions will be honored.

In most cases, these temporary extensions will not warrant a plan amendment or distribution of a Summary of Material Modification (SMM). Further, the DOL's guidance does not contain an explicit requirement that employer-sponsors provide any sort of notice to plan participants and beneficiaries regarding these extensions. Therefore, employer-sponsors likely have discretion over the form and manner of notice.

Finally, the guidance makes clear that the DOL will continue to monitor the effects of the public health emergency and may provide additional relief as warranted. As a result, employer-sponsors should remain alert for future instruction from the DOL.

ADDITIONAL RESOURCES

U.S. Department of Labor's Notice on Extension of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak

<https://www.dol.gov/sites/dolgov/files/ebsa/temporary-postings/covid-19-final-rule.pdf>

U.S. Department of Labor's COVID-19 FAQs for Participants and Beneficiaries

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/faqs/covid-19.pdf>

EBSA Disaster Relief Notice 2020-01

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>