May 1, 2020

Federal Agencies Announce COVID-19 Relief for Employee Benefit Plans

On April 29, the U.S. Department of Labor (DOL) released three pieces of guidance to help employee benefit plan participants and beneficiaries, plan sponsors and fiduciaries, and plan service providers navigate the administrative and compliance challenges resulting from the COVID-19 pandemic.

1. Final Rule Extends Key Time Frames Affecting Plan Administration

The DOL, together with the Department of the Treasury and the Internal Revenue Service (the Agencies), issued a final rule mandating that the period beginning March 1 (the date the COVID-19 National Emergency was declared) and ending 60 days after the announced end of the National Emergency or such other date announced by the Agencies (the Outbreak Period) be disregarded for purposes of calculating certain time frames applicable to the administration of employee benefit plans. In other words, the applicable time frame would apply at the end of the Outbreak Period, as illustrated by the following example:

- Due to the birth of her child on March 31, Employee A is eligible to enroll in her employer-sponsored group health plan outside the open enrollment period pursuant to HIPAA's special enrollment rights, which provides, in this instance, for a 30-day period to request enrollment. Employee A may exercise her HIPAA special enrollment rights up to 30 days after the end of the Outbreak Period.

While the final rule emphasizes the time frames applicable to group health plan coverage (e.g., the periods for electing and maintaining COBRA continuation coverage), it also addresses the time frames for submitting benefit claims and appealing adverse benefit determinations. As such, the final rule applies not only to group health plans, but also to all other ERISA welfare benefit and pension benefit plans. Accordingly, plan sponsors and service providers should update their processes for tracking the applicable time frames to disregard the Outbreak Period.

The final rule notes that there may be different Outbreak Period end dates for different parts of the country, which will be addressed in subsequent guidance. Therefore, plan sponsors and service providers with operations in multiple locations across the United States will need to track future announcements regarding regional Outbreak Period end dates and further revise their processes accordingly.

2. DOL Notice Extends Disclosure Periods and Provides Additional Compliance Guidance

Employee Benefits Security Administration (EBSA) Disaster Relief Notice 2020-01 (the Notice) addresses a variety of topics of particular interest to plan sponsors and fiduciaries. Among the most significant are the following:

- Extension of the deadlines for ERISA-mandated disclosures (e.g., defined benefit plan annual funding notices or participant benefit statements) that would otherwise be required to be furnished during the Outbreak Period. This relief is conditioned upon the plan and the responsible fiduciary acting in good faith and furnishing the information as soon as administratively practicable under the circumstances. Good faith acts include the use of electronic alternative means of communicating with participants and beneficiaries who the plan fiduciary reasonably believes have effective access to electronic means of communication (e.g., email, text message and continuous access to websites).
- ERISA's prohibited transaction rules will not be treated as violated because a plan timely adopts the increased limits on plan loans or the delayed loan repayment period, each as permitted under the CARES Act. Please refer to our prior client advisory discussing the employee benefits provisions under the CARES Act for a further explanation of the changes to the plan loan rules.

- Nonenforcement for the delay in transmitting participant contributions and plan loan repayments to the plan, but only if the failure is attributable to the COVID-19 outbreak and only if the employers and service providers act reasonably, prudently and in the interest of employees to transmit the amounts to the plan as soon as administratively practicable under the circumstances.

Other compliance issues addressed in the Notice relate to the timing for distribution of blackout notices, Form 5500 filing relief and other general fiduciary compliance guidance (i.e., if the plans act prudently, reasonably and in the interest of covered workers and their families, the DOL's enforcement actions will emphasize compliance assistance, grace periods and other appropriate relief).

3. FAQs

Finally, the DOL issued a series of frequently asked questions (FAQs) to help all affected by the COVID-19 pandemic understand their rights and responsibilities under their health benefit and retirement benefit plans. Plan sponsors and service providers should review the FAQs to ensure that the procedures they have put in place align with the expectations of the DOL.

If you have any questions regarding the above or any other employee benefits matters, please reach out to any of the attorneys in Day Pitney's Employee Benefits and Executive Compensation group.

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

Authors



David P. Doyle
Partner

Parsippany, NJ | (973) 966-8136

ddoyle@daypitney.com



Thomas F. J. O'Mullane
Partner

Parsippany, NJ | (973) 966-8413

tomullane@daypitney.com