

## EMPLOYEE BENEFITS

### IT'S OFFICIAL - IMPLEMENTATION OF FINAL RULE ON DISABILITY CLAIMS PROCEDURES FORMALLY DELAYED

By Eric W. Gregory

On November 24, 2017, the Department of Labor ("DOL") Employee Benefits Security Administration ("EBSA") formally delayed the applicability date of previously issued final regulations imposing new claims procedures to disability claims. According to [the final rule](#), these procedures will now apply starting April 2, 2018.

#### Are These Rules Only Applicable to "Disability" Plans?

These rules apply to any "claims for disability benefits" made pursuant to an employee benefit plan covered by ERISA, and are not limited to disability plans. Therefore any plan that provides for benefits based on a disability determination, including 401(k), pension, and other retirement plans, is affected by this rule change.

#### What Becomes Effective on April 2, 2018?

The new claims procedures, originally announced on December 16, 2016, will impose procedural protections similar to those currently in place under the Affordable Care Act ("ACA") to any plans that allow disability claims.

The rule amends the claims and appeals regulations issued under ERISA Section 503 to require that:

- Claims and appeals be adjudicated in a manner designed to ensure independence and impartiality of the persons involved in making the decision;
- Benefit denial notices contain a full discussion of why the plan denied the claim and the standards behind the decision, including the basis for disagreeing with the views of health care professionals, vocational professionals, or with disability benefit determinations by the Social Security Administration;
- Claimants be given timely notice of their right to access their entire claim file and other relevant documents and must be allowed to present evidence and testimony during the review process;
- Claimants be given notice and a fair opportunity to respond before denials at the appeals stage are based on new or additional evidence or rationales;
- Claimants be permitted to seek court review of a claim denial

based on a failure to exhaust administrative remedies under the plan, if the plan failed to comply with the claims procedure requirements unless the violation was the result of a minor error;

- Certain rescissions of coverage be treated as adverse benefit determinations triggering the plan's appeals procedures; and
- Required notices and disclosures issued under the claims procedure regulation are written in a "culturally and linguistically appropriate" manner.

#### How Do These New Claims Procedures Affect Employers?

With respect to employers that maintain self-funded disability plans or retirement plans with benefits based on disability determinations, plan documents and summary plan descriptions will need to be updated. Additionally, new compliant procedures will need to be put into place. For employers that maintain insured disability plans, communication with the insurance carrier to discuss how the new procedures will be applied and documented will be important.

Employers may consider amending their retirement plans so that the definition of disability relies on the determination of a third party, such as the Social Security Administration or the employer's long-term disability carrier. In that case, the disability claims rules generally would not apply to the retirement plan.

#### Conclusion

The EBSA stated that delay "is necessary to enable the Department of Labor to carefully consider comments and data [...] and] to examine regulatory alternatives that meet its objectives of ensuring the full and fair review of disability benefit claims while not imposing unnecessary costs and adverse consequences." Therefore, it is possible that further delays or changes may be forthcoming to these disability claims rules. It is also possible that they will be rescinded completely.

Please contact the author of this Alert or any member of the Dickinson Wright employee benefits practice team if you have any questions about the disability claims rules, need assistance in developing appropriate claims language, or in reviewing insurance carrier documents.

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