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February 19, 2018


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New Disability Claims Procedures for ERISA Plans Become Effective on April 1, 2018

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After a three-month delay, the Department of Labor's new regulations governing claims procedures for disability benefits under ERISA plans will become effective on April 1, 2018. The delay was implemented to provide an additional period to consider the impact of the new regulations, but no changes were made to the final regulations originally published in December 2016. Therefore, employers will need to ensure that claims for disability benefits filed on or after April 1 comply with the new procedures. In addition to disability and welfare plans, these rules also apply to certain retirement plans that provide disability benefits.

How the New Rules Apply to ERISA Plans

Any plan that is subject to ERISA in which a fiduciary is required to make a determination as to whether a participant is disabled under the terms of the plan will be subject to the new regulations. Therefore, most of the plans for which the new regulations apply are health and welfare plans that provide disability benefits.

The new regulations also apply to retirement plans that provide disability benefits. However, if a retirement plan ties its definition of disability to a disability determination made under a long-term disability plan covering the participant or the Social Security Administration, the new procedures will not apply to the plan because the DOL does not consider the claim to be a disability claim under the retirement plan. However, if the plan's definition of disability requires the plan administrator to make an independent determination that the participant is disabled, the plan's claims procedures will need to comply with the new regulations. It's also worth noting that non-qualified deferred compensation plans, which are generally exempt from ERISA, are required to follow ERISA claims procedures.

What the New Regulations Require

The new regulations are designed to emphasize the independence and impartiality of those making disability determinations, so employers and plan administrators cannot base their hiring, compensation, termination or promotion decisions on the likelihood that disability claims will be approved or denied. The regulations provide several new requirements that plan administrators must follow in deciding disability claims:

- If a claim is denied, plans must provide a detailed explanation for the reasons behind the denial, including an explanation of the basis for the administrator's decision to disagree with or not follow the view of a health care professional treating the claimant, medical or vocational experts obtained on behalf of the plan, or a disability determination made by the Social Security Administration.
- Any claim denial must include the internal rules, guidelines, protocols, standards or other similar criteria that the plan relied upon in denying the claim, or a statement that none exist.
- If the administrator relies on new information or evidence to deny an appeal, or bases the denial of the appeal on a new or additional rationale, the administrator must disclose this information to the claimant and give the claimant sufficient time to respond before the deadline to decide the appeal.
- Notices of denials must be provided in a "culturally and linguistically appropriate manner," meaning that claim or appeal denial letters may need to include a statement in a non-English language regarding the availability of language assistance.
- If the plan imposes a limitations period for filing a lawsuit under ERISA Section 502, a claimant must be advised of the limitations period (including the date on which the period expires) in an adverse determination of his or her appeal. The limitations period cannot end before the internal claims procedures are exhausted.

If a plan fails to substantially follow these requirements, the participant will be deemed to have exhausted his or her administrative remedies and may then file suit against the plan on the basis that the plan did not provide a reasonable claims procedure. In this case, the court will not be required to provide any deference to the plan fiduciary's determination.

What Employers Should Do Now

With the new procedures going into effect on April 1, sponsors should review the disability provisions in their ERISA-covered plans to determine if action needs to be taken to comply with the new requirements.

- If an employer sponsors a disability plan in which disability determinations are delegated to an insurer, it should confirm that the insurer is prepared to implement these procedures by April 1.
- Any template denial notices that an employer uses should also be reviewed and, if necessary, updated to comply with the new regulations.
- For retirement plans that are subject to the new regulations, one of two approaches is possible, either of which may require an amendment to the plan. One approach is to modify the claims procedures to comply with the new regulations. The second is to change the plan's definition of disability to base the determination on whether the participant has been determined to be disabled under the employer's long-term disability plan or by the Social Security Administration.

Sponsors should also take a moment to make sure that their delegations of those persons or committees that are authorized to decide claims and appeals under their ERISA plans are up to date. Plan documents (especially prototype 401(k) plans) typically just designate the "plan administrator" as the party to decide claims and appeals. However, we find it to be a best practice to delegate these functions to employees of the sponsor (or a committee of employees). Although the need to go through the formal claims procedures is not frequent in some plans, especially 401(k) plans, sponsors should be prepared.

For more information or for assistance on determining the impact of these rules on the plans you sponsor, contact the Shumaker attorney who you normally rely on for employee benefits advice, John Burgess in our Tampa office at jburgess@slk-law.com, Jim Culbreth in our Charlotte office at jculbreth@slk-law.com, David Fournier in our Toledo office at dfournier@slk-law.com, or Scott Newsom in our Toledo office at snewsom@slk-law.com.