

The US Department of Labor (DOL) recently announced deadline relief for employee benefit plan notices, disclosures and document deadlines that must be furnished between March 1, 2020 and 60 days after the announced end of the coronavirus disease 2019 (COVID-19) National Emergency (“Outbreak Period”), if the employee benefit plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. In addition, the guidance sets forth a guiding principle for plan fiduciaries: plans “should make reasonable accommodations to prevent the loss of benefits or undue delay in benefit payments and should attempt to minimize the possibility of losing benefits because of a failure to comply with pre-established timeframes.”

The guidance, Disaster Relief Notice 2020-21, issued by DOL’s Employee Benefits Security Administration (EBSA) on April 28, 2020, was closely followed by a final regulation, issued jointly by DOL and the Internal Revenue Service (IRS), extending timeframes for a variety of requirements under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code). The Final Rule, Extension of Timeframes, was published in the Federal Register on May 4, 2020.

Forwarding Participant Contributions and Wage Withholding to Retirement Plans

During the Outbreak Period, employers will be relieved of the obligation to transfer participant contributions and wage withholdings within the existing timeframes (by the earliest date that they can be segregated from general assets but no later than the 15th day of the month following the month in which the amounts are withheld from participant wages) as long as they act in good faith and forward these amounts as soon as administratively practicable under the circumstances.

COBRA

COBRA premium payments, generally required to be paid within 30 days of their due date, will be treated as timely if made within 30 days following the end of the Outbreak Period. The Outbreak Period also will be disregarded with respect to the 60-day period that individuals who have lost health care coverage are given to elect continuation coverage under COBRA, the deadline for individuals to notify their plans of a determination of disability or COBRA qualifying event, and the date by which health plans, sponsors or administrators must provide COBRA election notices.

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The extended deadlines for electing COBRA coverage and paying COBRA premiums appear to give individuals the flexibility to evaluate whether COBRA coverage is desirable (and affordable) after the end of the National Emergency and to elect and pay for coverage retroactively at that time. The package of COBRA deadline relief may reduce – or complicate – the tide of COBRA litigation that some expect to result from the enormous number of COVID-19-related layoffs.

Special Enrollment Rights

The same flexibility applies to individuals who have lost health care eligibility or have become a dependent of an employee based on birth, marriage or adoption and are eligible for coverage under another plan. These individuals generally are permitted to enroll in health care coverage for which they are otherwise eligible outside of the regular enrollment period if they elect to do so within 30 days (or in some cases 60 days) of losing coverage. With the relief provided, this decision (and, in theory, the accompanying payment) need not be made until after 30 (or 60) days after the Outbreak Period.

Benefit Claims

Deadlines for benefit claims, appeals of adverse decisions, and requests for external reviews of decisions will be delayed so that they need not be filed until the end of the Outbreak Period.

Notices and Disclosures

Delays in furnishing notices, disclosures or other documents required under Title I of ERISA or blackout period notices due during the Outbreak Period will not be treated as ERISA violations if the delay is COVID-related and the notice, disclosure or other document is furnished as soon as administratively practicable under the circumstances.

DOL Conformity With CARES Act and Other Guidance

Notice 2020-21 provides ERISA relief with respect to plan loans and Form 5500 filings to conform to the measures under the Internal Revenue Code enacted by the CARES Act. It also extends relief to Form M-1 filing deadlines for multiple employer welfare arrangements.