

New Claims Procedures for Disability Benefit Claims Come Into Force

Many ERISA-covered employee benefit plans will need to be amended effective April 2.

Companies may need to update their Employee Retirement Income Security Act of 1974 (ERISA)-covered employee benefit plans to comply with recently approved Department of Labor regulations governing disability claims procedures.

These new rules will impact a wide variety of employee benefit plans. Plans that are subject to ERISA, and therefore subject to these new rules, may include:

- Short-term and long-term disability plans
- Defined benefit pension plans
- Profit-sharing plans
- 401(k) plans
- Severance plans
- “Top-hat” plans

Because employment agreements and equity compensation plans are generally not subject to ERISA, they are exempt from these changes.

Objective of New Rules

The new rules intend to offer additional procedural protections and safeguards to claimants seeking disability benefits under an ERISA plan. For example, claimants must receive an opportunity to review and respond to new evidence or rationales developed by the plan while an appeal is pending. In addition, disability benefit denial notices must contain a “discussion of the decision” when the plan does not follow a Social Security Administration disability determination or otherwise contradicts the views of the treating professionals.

Application of New Rules

- The claims procedures under an ERISA plan will need to be updated if: A disability determination impacts a participant’s eligibility and/or benefits under the plan, and
- The plan’s claims administrator has discretion in determining whether the participant is disabled

By contrast, if a plan relies upon a non-discretionary definition of disability, such as a disability determination made by the Social Security Administration, then no change is required to comply with the new regulations.

Next Steps

If an ERISA plan is subject to the new claims procedure requirements, any necessary plan amendments should be adopted effective April 2, 2018. Summary plan descriptions and claim and appeal responses will also need to be revised. In addition, an individual or a committee acting as the claims administrator will need to begin complying with the new claims procedures for any claims filed on or after April 2, 2018. If the plan fails to comply with the new claims procedures, the claimant will generally be deemed to have exhausted the administrative remedies available under the plan, enabling the participant to file suit in court.

Please contact Latham & Watkins if you have any questions regarding the applicability of these new rules or for assistance in updating the claims procedures under ERISA-covered plans.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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