



COMPLIANCE ALERT



EMPLOYEE BENEFITS | APRIL 29, 2020

Agencies Extend Deadline to Pay COBRA Premiums, Extend Certain Other ERISA and Internal Revenue Code Deadlines Due to COVID-19

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The impacts of the COVID-19 National Emergency, as declared by President Trump on March 13, 2020, have been vast. As a result, many employers and employees are struggling to meet their various filing, notice, election, or other deadlines. In order to ease this burden on employers, plans and participants, on April 28, 2020, the Department of Labor (DOL), the Internal Revenue Service (IRS), and Department of Health and Human Services (HHS) issued much needed guidance and relief. Notably, the guidance requires employers and plans to suspend the deadline for qualified beneficiaries to elect COBRA or pay COBRA premiums from March 1, 2020 until 60 days after the National Emergency ends (or such other date as specified by the Agencies).

DOL Relief for Group Health Plans and Disability and Other Welfare Plans

EBSA Disaster Relief Notice 2020-01, eases the burden for group health plans, disability plans, and pension plans to provide notices and disclosures required under ERISA and Internal Revenue Code of 1986 (the "Code") by clarifying, among other things, that:

- Neither the plan nor the employer will violate ERISA for failing to timely furnish a notice, disclosure, or document that must be furnished between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency, if they act in good faith and make the disclosure as soon as administratively practicable under the circumstances.
- Plans and employers may communicate electronically with plan participants and beneficiaries who they reasonably believe have effective access to electronic means of communication, including email, text messages, and continuous access websites.
- Filing relief for Form 5500 applies per IRS Notice 2020-23, which was issued earlier this month. IRS Notice 2020-23 provides that employers with plan years ending September 30, 2019, October 31, 2019, or November 30, 2019 have until July 15, 2020 to file Form 5500. The deadline for calendar year plans has not been extended, though plans may file a Form 5558 by July 31, 2020 to have the deadline automatically extended an additional 2.5 months, to September 15, 2020.

EBSA Notice 2020-01 also includes general ERISA fiduciary compliance guidance, asking plans to "act reasonably, prudently, and in the interest of the covered workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic well-being." The DOL requests that plans make reasonable

accommodations to prevent the loss of benefits or undue delay in paying benefits.

Finally, the Notice clarifies that relief may be further extended in specific regions of the country if there are different outbreak period end dates for different parts of the country.

Relief for Participants and Beneficiaries

In order to ease the burden on participants and beneficiaries, the DOL, in coordination with the IRS issued a Final Rule extending certain timeframes and deadlines for participants to consider coverage elections and benefits decisions under ERISA and the Code.

Specifically, Final Rule provides plan participants, beneficiaries, qualified beneficiaries, and claimants with relief from meeting the below referenced periods and dates during the period of March 1, 2020 until 60 days after the announced end of the COVID-19 National Emergency (or such other date announced by the Agencies in a future notice):

- The 30-day period (or 60-day period, if applicable) to request a special enrollment;
- The 60-day election period for COBRA continuation coverage;
- The date/deadline for making COBRA premium payments;
- The deadline for individuals to notify the plan of a qualifying event or determination of disability;
- The deadline within which employees can file a benefit claim, or a claimant can appeal an adverse benefit determination, under a group health plan's or disability plan's claims procedures;
- The deadline for claimants to file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination; and
- The deadline for a claimant to file information to perfect a request for external review upon finding that the request was not complete.

Consistent with the above, the Final Rule provides group health plans with relief from issuing COBRA election notices for any qualifying event that occurred between March 1, 2020, and 60 days after the announced end of the COVID-19 National Emergency (or such other date announced by the Agencies in a future notice).

Neither the Final Rule nor EBSA Notice 2020-01, provide guidance regarding the applicable PCORI fee amount for plan years ending after October 1, 2019, extend the PCORI fee deadline (currently July 31, 2020), or modify permitted cafeteria plan election changes.

Employers are encouraged to familiarize themselves with the relief in the Final Rule and EBSA Notice 2020-01, work with their insurance broker, COBRA administrator or other vendors to ensure compliance with this relief, and continue to work with their employees during this difficult time.

This alert was prepared for Woodruff Sawyer by Marathas Barrow Weatherhead Lent LLP, a national law firm with recognized experts on the Affordable Care Act. Contact Stacy Barrow or Nicole Quinn-Gato at sbarrow@marbarlaw.com or nquinnгато@marbarlaw.com.

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