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Disability Claim Regulations Take Effect April 1, 2018

INTRODUCTION

The Department of Labor (DOL) has recently confirmed that final disability claims procedures regulations originally issued December 19, 2016 will take effect April 1, 2018. The rules will apply to disability related claims filed on or after that date. These regulations impose standards similar to what already applies for health plan claims rules (developed under the ACA) to any ERISA benefit determinations based on a participant's disability status. As such, they have potentially broad application to various ERISA plans. This Compliance Alert focuses on employer sponsored disability plans.

BACKGROUND

There have been claims and appeals rules for disability plans subject to ERISA for many years. These new regulations are an attempt to increase transparency of the review process; prevent conflicts of interest with respect to claims reviews and denials; and align the disability claims process with the process that already applies to claims for group health benefits.

The effective date of the regulations was originally January 1, 2017, but the applicability date was delayed until January 1, 2018. In November of 2017, in response to President Trump's Executive Order 13777, the DOL delayed the applicability date until April 1, 2018. In early January of 2018, the DOL issued a statement indicating that the comments provided by stakeholders "did not establish that the regulations impose unnecessary burdens or significantly impair workers' access to disability benefits."

The statement confirmed that the applicability date would remain April 1, 2018, and that the agency would not further delay nor change the regulations.

The regulations apply only to disability plans subject to ERISA. Most long-term disability (LTD) plans are subject to ERISA (assuming the employer who sponsors the plan is subject to ERISA). Many employers also offer short-term disability (STD) programs. Many STD plans satisfy the conditions of the DOL payroll practice exemption (DOL Reg. §2510.3-1(b)(2)). These STD programs would not be an ERISA disability plan and are not subject to the claims and appeals regulations. Note that if an STD plan is insured, it is subject to ERISA and these new regulations.

WHAT DO EMPLOYERS NEED TO DO?

Employers generally rely on their insurance carrier or third-party administrator (TPA) to handle the claims appeal review process for disability coverage offered to employees. This will not change with the implementation of these new rules. The first thing the employer should do is to confirm with existing carriers, and administrators, that they are prepared to implement the procedures necessary to comply with these new rules. Employers should also confirm that the carrier or TPA will be sending any appeal notifications required by the new rules to affected participants.

Employers should also consider the following:

- Employers should review language in existing plan documents and summary plan descriptions (SPDs). Many employer documents do not include a detailed description of claims and appeals rules; rather, the

employer documents refer to details contained in related insurance contracts and certificates. However, other employers may have incorporated more detailed claims and appeal rules information into their plan documents and SPDs.

- Any other documents outlining the plan's claims procedure (e.g., insurance certificate, benefits books, etc.) should be reviewed and updated as necessary to ensure that they describe plan procedures according to requirements under the new regulations.
- The notice requirements in the regulations are generally related to information that is provided to participants who are involved in filing a claims appeal. There are no new requirements to proactively notify participants of the new rules, other than updating relevant plan documents and SPDs described above. Most plans rely on the carrier or TPA to send participant notices required during an appeal. However, employers should also be sure they have processes in place to identify when non-English communications are required if the carrier or the TPA is not sending these notices.
- If a TPA is used, the employer should review its administrative services agreement with the TPA to clearly establish responsibility (and liability) for compliance.

SUMMARY

Note again that most employers rely on their disability insurance carrier or their TPA to manage most of the claims and appeal process, including the notices that must be sent to participants. However, the employer is ultimately responsible for the plans it sponsors, so it is imperative that employers work with carriers and TPA to understand their deliverables and to know when the employer may have some involvement in the claims appeals process. We have included a detailed summary of the new rules in Attachment 1.

As always, should you have any questions, please contact your Parker, Smith & Feek Benefits Team. While every effort has been taken in compiling this information to ensure that its contents are totally accurate, neither the publisher nor the author can accept liability for any inaccuracies or changed circumstances of any information herein or for the consequences of any reliance placed upon it.