

## Year-end Reminder: 2018 Changes to ERISA Claims Procedures Apply to More than Just Long Term Disability Plans

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### **Disability benefit claim rules also apply to retirement plans and executive deferred compensation plans.**

Earlier this year, changes became effective to the ERISA claims procedures affecting disability benefit claims. Most employers have addressed the impact that these changes had on their long-term disability plans. But some employers have yet to focus on how these changes may affect the administration of their defined benefit pension plans and other tax-qualified retirement plans, and on certain welfare benefit plans and executive non-qualified deferred compensation plans, such as SERPs. Many retirement and deferred compensation plans allow distributions to be made or accelerate vesting of accrued benefits upon a finding of disability. If your plan conditions the availability of a benefit upon a showing disability, and the plan administrator has discretion in determining whether a participant is classified as disabled, then you need to be concerned about the changes to the ERISA claims procedures. Plans that rely on objective, non-discretionary criteria to determine disabled status, such as a determination by the Social Security Administration, will probably not be affected by the new rules.

**The new procedural rules apply to benefit claims that are filed on or after April 1, 2018.** Employers should carefully review of all benefit plans to make sure they stay in compliance.

**What the new rules require.** The U.S. Department of Labor issued the new procedural rules because of a concern that existing ERISA claims procedures might not allow for a full and fair review of disability benefit claims. The new procedural rules are intended to increase transparency and accountability about the decision-making process that leads to a denial of a claim for disability benefits. For example,

- Disability claim denial notices must now contain a number of new elements, including:
  - An explanation as to why the Plan disagreed with the views of (1) a health care or vocational professionals who evaluated the claimant or advised the Plan or (2) a disability determination of the Social Security Administration;
  - Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the Plan relied upon in denying the claim or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the Plan do not exist; and
  - A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claim.
- Disability benefit claimants are given extended period of time to appeal a denial decision.
- Before a Plan can deny a claim appeal, the plan administrator must provide the claimant, free of charge, any new or additional evidence considered, relied upon, or generated by the Plan, insurer, or other person making the benefit determination; such evidence must be provided as soon as possible and sufficiently in advance of the decision date, so as to give the claimant a reasonable opportunity to respond prior to that date.



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- Before a Plan can deny a claim appeal based on a new or additional rationale, the Plan administrator shall provide the claimant, free of charge, with the rationale; the rationale must be provided as soon as possible and sufficiently in advance of the decision date, so as to give the claimant a reasonable opportunity to respond prior to that date.

**Next Steps.** Employers should review all of their benefit plans and determine whether any benefits are conditioned on a finding of disability, and, if so, whether the plan administrator has any discretion in making the determination that a participant is disabled. As needed, employee benefit plan claims procedures and policies should be amended to be consistent with the new rules, and claims initially filed on or after April 1, 2018, should be reviewed under the new standards. Formal plan documents may need to be amended to incorporate the new procedures. Plan sponsors who outsource disability determinations should also confirm that the claims administrator is following the new rules for all plans, not just long-term disability plans.

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