

THOUGHT LEADERSHIP

LEGAL UPDATES

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New Developments: Clarification on Extensions of Benefit Deadlines

On February 26, 2021, the Department of Labor, the Treasury Department and Internal Revenue Service issued clarifying guidance regarding COVID-19-related deadline extensions under the Internal Revenue Code, ERISA, COBRA and HIPAA. As a reminder, in April 2020 the agencies issued joint guidance extending certain deadlines. The initial deadline extension was effective during the “Outbreak Period,” which started March 1, 2020 and runs until 60 days after the announced end of the Presidentially declared COVID-19 National Emergency.

The departments cited ERISA §518 and Code §7580A(b) as the authority permitting the initial deadline extensions. However, those statutes expressly limit the authority to extend deadlines for a period of only one year. As the Outbreak Period neared the one-year anniversary, many questions arose around the applicability of the deadline extension beyond February 28, 2021.

EBSA Disaster Relief Notice 2021-01 was issued to answer those questions, and in short provides that the deadline extension period is determined on an individual-by-individual or case-by-case basis. Specifically, applicable deadlines that fall within the Outbreak Period are extended until the earlier of: (i) the one-year anniversary of the otherwise applicable deadline, or (ii) the end of the Outbreak Period. This applies to deadlines applicable to individuals participating in the plan, as well as deadlines applicable to the plan and plan administrators. For example:

A COBRA-qualified beneficiary who normally would have been required to make a COBRA election by April 1, 2020, has until March 31, 2021 (exactly one year) to make the election, despite continuation of the Outbreak Period beyond that date.

A COBRA-qualified beneficiary whose COBRA election was required by March 1, 2021, now has until the earlier of February 28, 2022, or the end of the Outbreak Period.

While Notice 2021-01 does not expressly speak to this issue, DOL and IRS officials and other commentators have suggested that the one-year extension applies to each separate election or deadline imposed on an individual. For example, the deadline for a COBRA-qualified beneficiary to elect continuation coverage would be extended for one-year from the date the election would otherwise be required. Similarly, the deadline to make the initial COBRA payment would be extended for one year from the date the first payment would otherwise be due. If this is the correct interpretation, the administration of COBRA may prove unwieldy for some and an employer's COBRA liability could be unknown for many years in the future. We are unsure whether this interpretation is supported by the statute and would be enforced by a court if challenged, but we will watch for future guidance in this regard.

The DOL also advises that plan administrators should consider affirmatively notifying participants regarding the deadline extensions, including amending and updating prior disclosures that may not have included the deadline extensions.

What this means to you

From a practical standpoint, the clarifying guidance is welcome to answer the uncertainty regarding the original guidance; however, the updated guidance is sure to create significant administrative challenges on plan administrators. That is especially the case in light of the recently announced COBRA subsidies.

Contact us

We will continue to monitor these developments and are here to help guide you through any of these administrative challenges. Contact Jordan Bergkamp, David Eckhardt, Craig Kovarik or your Husch Blackwell attorney if you have any questions.

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