LEGALcurrents®

March 5, 2018

Harter Secrest & Emery LLP

ATTORNEYS AND COUNSELORS

EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

FINAL DOL DISABILITY CLAIMS PROCEDURE

Recently, the U.S. Department of Labor ("DOL") announced that it would not further delay the effective date of revised claims procedure regulations for ERISA-covered plans providing disability-related benefits. The new regulations will apply to disability claims filed on or after April 2, 2018. The regulations were published in final form in December of 2016 and were originally scheduled to apply to claims filed on or after January 1, 2018. In November of 2017, the DOL delayed their application so that it could conduct a review, designed in part, to ensure that the regulations did not impose unnecessary costs or regulatory burdens. In announcing the April 2, 2018 applicability date, the DOL said that it would not be making any changes to the regulations, which give disability benefit claimants new procedural protections when their claims for disability benefits are denied and require enhanced disclosures in connection with claim denials.

The new regulations make several key changes to the existing DOL claims procedure regulations applicable to disability benefit claims and align the process for these claims more closely with the protections applicable to medical benefit claims. In general, the regulations state that the plan administrator must: (i) provide more detail in benefit denial letters to ensure that disability claimants receive a clear explanation of why their claims were denied (including the plan's rationale for disagreeing with the views of health care professionals who evaluated the claimant (both the claimant's own providers and those retained by the plan) or a disability determination by the Social Security Administration); (ii) adopt certain policies and procedures to avoid conflicts of interest and ensure impartiality in the decision-making process; (iii) allow claimants to review and respond to new information developed by the plan during an appeal; (iv) allow claimants to proceed directly to court, before exhausting the internal claims and appeals process, if the plan or issuer does not properly comply with the rule's procedures; (v) provide the written claim or appeal denial in a culturally and linguistically appropriate manner and (vi) clearly disclose any deadlines for further legal action. The regulations also provide that a claims adjudicator cannot be hired, promoted, terminated, or compensated based on the likelihood of denying claims.

All ERISA-covered plans that condition benefits on the plan's finding of a disability are potentially affected by the regulations. Most obviously, the regulations apply to ERISA-governed long-term disability plans. In addition, the regulations may also apply to some decisions under retirement plans, life insurance plans, and other plans if they provide special benefits to participants who are disabled—for example, a disability

Practice Group Leader
Paul W. Holloway

Retirement
Mark W. Wilson

Health and Welfare
Thomas J. Hurley

Executive Compensation
Christopher M. Potash

Counsel
Leslie E. DesMarteau
Lisa G. Pelta
Joseph E. Simpson
Lori J. Stone

Senior Associate
John W. Brill

Associates
Vittoria L. Buzzelli
Crosby A. Sommers

Benefits Litigation Counsel
John P. Bringewatt
Megan K. Dorritie
Erika N. D. Stanat

pension benefit or a life insurance premium waiver for a disabled employee.[1] Short-term disability plans that do not qualify for an exception to treatment as ERISA plans will also be subject to the new regulations.

The final regulations significantly increase the duties of claim decisionmakers for plans subject to these regulations. For benefits provided on an insured basis, the burden will fall on the insurance carrier, which generally has the sole authority to make claim determinations under the insurance contract. Insured employers should contact their insurance carriers to discuss their timetable for compliance with the regulations. For benefits provided on a self-insured basis, or where an insurance carrier is not involved in claim administration (such as for a disability benefit under a pension plan), the employer should review its internal procedures, if its own staff handles claims, and otherwise should contact the claims administrator or recordkeeper to discuss preparation for compliance with the regulations.

Employers who maintain plan documents that contain detailed claim language may need to amend those documents to reflect the new regulations. The employer will need to coordinate with the plan's insurer, third-party administrator or other vendors as necessary to update summary plan descriptions, insurance coverage certificates or other benefit description documents and arrange to have them distributed to plan participants. Employers should also review their insurance contracts and administrative service agreements with any third party that is responsible for making claim decisions to determine whether amendments to these documents are necessary.

If you have any questions regarding your compliance with these regulations, please do not hesitate to contact any member of our firm's Employee Benefits and Executive Compensation Practice Area at 585.232.6500 or visit www.hselaw.com.

[1] Note that if a plan benefit is conditioned on a finding of disability made by a party other than the plan, the claim is not considered a "disability" claim subject to the enhanced disability claims procedures. For example, if a pension plan determines disabled status for purposes of eligibility for disability retirement based solely on whether a participant has been determined to be disabled by the administrator of the employer's long-term disability plan or by the Social Security Administration, the pension plan does not need to apply the disability claims rules, and instead should handle the claim using the standard claims process.