

COVID-19 Extension of Group Welfare Plan Benefit Deadlines Clarified Bringing Potential Relief for Employers

Labor & Employment Law Update

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In a previous blog article, we alerted readers to the extension of deadlines related to COBRA, Special Enrollment, Plan Disclosures and more. The prior Joint Notice from the DOL and IRS provided suspension of all deadlines until 60 days after the expiration of the National Emergency, referred to as the "Outbreak Period."

The issue requiring clarification arose due to the unanticipated length of the Outbreak Period. Much like all of us, the IRS and DOL did not foresee an Outbreak Period continuing well over a year later. As the one-year anniversary of the Outbreak Period approached, a conflict began to arise with ERISA section 518 and Code section 7508A(b). Those provisions generally provide that the Secretaries of Labor and the Treasury may prescribe extensions of only up to one-year when it relates to a Presidentially declared disaster. Accordingly, some plans were contemplating a complete disregard of further extensions based on the one-year limitation on the emergency rule-making process. Anticipating this potential action by plan sponsors, the DOL (also on behalf of the IRS) issued Disaster Relief Notice 2021-01.

However, with Notice 2021-01, the intended "clarification" of the discrepancy has led to a much more administratively complicated process. Now, plan sponsors and participants must apply the extension on an individual basis for each separate deadline versus the previously declared extension of all deadlines. Notice 2021-01 confirms that individual deadlines are revised to the earlier of: (1) one year from the date of the original deadline, or (2) the end of the Outbreak Period (previously defined and which has yet to occur).

Several specific examples were provided in Notice 2021-01 to help illustrate the revised administration of plan deadlines:

- If a qualified beneficiary would have been required to make a COBRA election by March 1, 2020, the Joint Notice delays that requirement until February 28, 2021 – which is the earlier of 1 year from March 1, 2020 or the end of the Outbreak Period (which remains ongoing).
- If a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, the election deadline is now delayed until the earlier of 1 year from that date (i.e., March 1, 2022) or the end of the Outbreak Period.
- If a plan would have been required to furnish a notice or disclosure by March 1, 2020, the relief under the Notice would end with respect to that specific notice or disclosure on February 28, 2021.

Note that none of the examples provided allow for a deadline extension of more than 1 year. For this reason, Notice 2021-01 provides much needed relief for employers that were trying to manage never-ending extensions for COBRA elections, payments, etc. And as additional relief for employers, the DOL specifically indicates that prior notices furnished without relying on the relief set forth in Notice 2021-01, do not need to be reissued.

Within Notice 2021-01, the DOL also reminds plan sponsors that “The guiding principle for administering employee benefit plans is to act reasonably, prudently, and in the interest of the workers and their families who rely on their health, retirement, and other employee benefit plans for their physical and economic well-being.” In keeping with this guiding principle, the DOL encourages plan sponsors to consider affirmatively sending notices to those participants that are now facing the end of the relief period advising them of such. In other words, if you now have COBRA participants or others that will be suddenly subject to election or payment deadlines, it is best practice to provide them with some type of notice or communication to that effect.

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