

## Client Alert

### **Amended Claims Procedures for Employee Benefit Plans Providing for Disability Benefits Are Now in Effect**

April 2, 2018 – Employee benefit plans subject to the Employee Retirement Income Securities Act of 1974 (“ERISA”) that provide disability benefits – e.g., 401(k), pension, medical and disability plans – must now comply with the Department of Labor’s amended rule on disability claims procedures. The amended rule went into effect on April 1, 2018, and generally requires that plan fiduciaries and insurance providers who make determinations about disability claims comply with heightened procedural safeguards if they deny disability benefits claims.

The amended rule generally requires that plan fiduciaries and insurance providers provide written notice of any denial of benefits, including the rationale behind that decision. It also provides an enhanced appeals process that increases transparency, protects claimants from conflicts of interest and ensures claimants have an opportunity to respond to denials of benefits.

Specifically, the amended rule requires that:

- Denial Notices; Right to Files. Benefit denial notices must now more completely explain why a claimant’s initial claim was denied, as well as inform claimants of the criteria used by the plan in making the denial, or state that none exist. Denial notices must also now include a statement that claimants are entitled to receive a free copy of the full claim file and attendant documents.
- Right to Review and Respond Prior to Final Decision. Before a final decision can be rendered on appeal, a claimant must be given the opportunity to review and respond to any new or additional evidence that was not included when the benefit was initially denied.
- Conflicts of Interest. The individuals who decide disability benefit claims and appeals must be independent and impartial. For example, a claims adjudicator or expert could not be hired, promoted, terminated or compensated based on the denial of benefits.

- *Exhaustion of Claims.* If a plan fails to abide by the new claims processing rules (other than for minor errors not likely to cause prejudice or harm to the claimant), a claimant need not exhaust the administrative remedies available under the plan and can immediately pursue his/her claim in court.
- *Cancellation or Discontinuance of Coverage.* Any cancellation or discontinuance of disability coverage (including retroactive terminations due to alleged misrepresentations of fact) are treated as “adverse benefit determinations” under the amended rule, thus allowing a claimant to appeal the denial.
- *Language Used in Notices.* Benefit denial notices and disclosures must be provided in a “culturally and linguistically appropriate manner”, meaning if a claimant’s address is located in a county where ten percent or more of the population is literate only in the same non-English language, notices must include a prominently written statement in the relevant non-English language about the availability of various language services. Additionally, the plan would be required (upon request) to provide written notices in the non-English language.

If you have any questions regarding the amended rule, disability benefit claims procedures generally, or ERISA, please contact one of our following Compensation, Benefits & Employment attorneys:

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