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Disability Claims Procedures Finally Final

Insight — 01/11/2018

Last week, the Department of Labor (DOL) announced that the enhanced disability claims procedures will indeed be applicable in their final form for claims for disability benefits after April 1, 2018. (See our prior Alert for information on the new regulations here.)

In December of last year, an additional 90-day delay to the applicability date of the final rules – from January 1, 2018 to April 1, 2018 – was announced giving the DOL time to solicit additional comments on the procedures and make a determination on if the final regulation should be retained 'as is', modified or rescinded altogether. The DOL determined that nothing in the information received supported the arguments that the new rules will impose unnecessary burdens or limit access to disability insurance benefits and thus, are moving forward with the final regulations without change.

Our hope was that the applicability of the rules to retirement and non-qualified deferred compensation plans would be reviewed and revised as disability can be a trigger for distribution in these types of plans. The new claims procedures apply to any plan that includes plan sponsor discretion in the determination of disability; the new procedures do not apply to a plan which relies on an independent third party to make a disability determination. Amending the definition of disability to remove plan administrator discretion may not be allowable under the anti-cutback rules, in which case new claims procedures will need to be put into place by April 1, 2018.

Although ERISA governed plans are already required to include adequate claims procedures, plan sponsors should review their current definitions of disability and claims procedures to insure compliance with the new rules by April 1, 2018. Contact a member of the Holland & Hart Benefits Law Group for assistance with this review and any required amendments.

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