

WHAT YOU NEED TO KNOW



DOL Final Rule on Disability Claims Procedures: Eight Things to Know

The U.S. Department of Labor (DOL) has issued regulations that relate to the handling of claims and appeals of disability determinations under benefit plans governed by ERISA. The DOL recently [announced](#) that April 1, 2018, is the effective date of this rule. The rule governs claims procedure requirements of ERISA-covered employee benefit plans that provide disability benefits.

Does this apply to your disability plan? In addition to health insurance, severance pay and other benefits, ERISA applies to disability income or salary continuance, unless it is paid entirely by the employer from its general assets. Occasionally, a disability plan could fall under the ERISA exception for “voluntary” group or group-type insurance programs that have minimal employer or employee organization involvement.

To qualify as a “voluntary plan” which does not need to comply with ERISA:

- The employee’s purchase of the plan must be entirely voluntary;
- Employees must pay the full premium; and
- The employer’s involvement must be minimal, which means that the employer may not contribute toward the premium, endorse the plan, or make a profit from the plan (such as through a commission or override).

Basically, the employer can have no more involvement than to allow the insurer to advertise and sell the plan to its employees and to collect and remit employee salary reductions for premiums.

If the new requirements apply: The DOL’s [Fact Sheet](#) contains a summary of the rule’s requirements. Essentially, if the plan conditions the benefit’s availability upon the claimant’s showing of disability and if the claims adjudicator must make a disability determination to decide the claim, then the following requirements apply:

1. Claims and appeals must be adjudicated to ensure independence and impartiality of the people involved in making the benefit determination (for example, decisions regarding hiring, compensation, termination, and promotion must not be made based on the likelihood that a person will support benefit denial).

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2. Benefit denial notices must contain a complete discussion of the reason the plan denied the claim and the standards applied in reaching the decision, including the basis for disagreeing with the views of health care professionals, vocational professionals, or Social Security Administration (SSA) disability benefit determinations.
3. Benefit denial notices must include a description of any applicable contractual limitations period and its expiration date.
4. Claimants must be given timely notice of their right to access to their entire claim file and other relevant documents and be guaranteed the right to present evidence and testimony in support of their claim during the review process.
5. Claimants must be given notice and a fair opportunity to respond before appeals stage denials are based on new or additional evidence or rationales.
6. Plans cannot prohibit a claimant from seeking court review of a claim denial based on a failure to exhaust the plan's administrative remedies if the plan failed to comply with the claims procedure requirements, unless the violation was the result of a minor error that was de minimis, non-prejudicial, attributable to good cause or matters beyond the plan's control, in the context of an ongoing good-faith exchange of information, and not reflective of a pattern or practice of non-compliance.
7. Plans must treat certain rescissions of coverage as adverse benefit determinations triggering the plan's appeals procedures.
8. Required notices and disclosures must be written in a culturally and linguistically appropriate manner.

In contrast, if a plan provides the benefit conditioned on an outside party's disability finding (for example, an SSA disability determination), then the claim for benefits is not treated as a disability claim for purposes of the DOL's final rule.

Employers with plans that provide disability benefits should review their plan documents, notices, and procedures to ensure that they conform with the DOL's rule by April 1, 2018.

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