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## Are You Disability Claim Procedure Ready?

The Department of Labor (DOL) confirmed the [final disability claims regulations](#) on January 5, 2018. These regulations are effective for all claims filed on or after April 1, 2018. Originally the regulation was to take effect on January 1, 2018; however, the DOL issued a 90-day delay in October 2017. Insurers, self-insuring employers, other coverage providers, and applicable large employers must furnish statements to employees or covered individuals regarding the health care coverage offered to them. Individuals may use this information to determine whether, for each month of the calendar year, they may claim the premium tax credit on their individual income tax returns.

### What are the New Regulations?

The new regulations are designed to emphasize the independence and impartiality of those making disability determinations, so employers and plan administrators cannot base their hiring, compensation, termination or promotion decisions on the likelihood that disability claims will be approved or denied.

The regulations provide several new requirements that plan administrators must follow in deciding disability claims:

- If a claim is denied, plans must provide a detailed explanation for the reasons behind the denial, including an explanation of the basis for the administrator's decision to disagree with or not follow the view of a health care professional treating the claimant, medical or vocational experts obtained on behalf of the plan, or a disability determination made by the Social Security Administration.
- Any claim denial must include the internal rules, guidelines, protocols, standards or other similar criteria that the plan relied upon in denying the claim, or a statement that none exist.
- Notices of denials must be provided in a "culturally and linguistically appropriate manner," meaning that claim or appeal denial letters may need to include a statement in a non-English language regarding the availability of language assistance.
- If the administrator relies on new information or evidence to deny an appeal or bases the denial of the appeal on a new or additional rationale, the administrator must disclose this information to the claimant and give the claimant sufficient time to respond before the deadline to decide the appeal.
- If the plan imposes a limitations period for filing a lawsuit under ERISA Section 502, a claimant must be advised of the limitations period (including the date on which the period expires) in an adverse determination of his or her appeal. The limitations period cannot end before the internal claims procedures are exhausted.

If a plan fails to substantially follow these requirements, the participant will be deemed to have exhausted his or her administrative remedies and may then file suit against the plan on the basis that the plan did not provide



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a reasonable claims procedure. In this case, the court will not be required to provide any deference to the plan fiduciary's determination.

### **What Employers Should Do Now?**

With the new procedures going into effect on April 1, 2018, sponsors should review the disability provisions in their ERISA-covered plans to determine if action needs to be taken to comply with the new requirements.

- **If an employer sponsors a disability plan in which disability determinations are delegated to an insurer, it should confirm that the insurer is prepared to implement these procedures by April 1<sup>st</sup>.**
- Any template denial notices that an employer uses should also be reviewed and, if necessary, updated to comply with the new regulations.

Plan sponsors should also take a moment to make sure that their delegations of those persons authorized to decide claims and appeals under their ERISA plans are up to date.

The new procedures won't apply to non-ERISA arrangements where an insurer does not pay benefits such as Short-Term Disability (STD) plans which are payroll practices to extend an employee's normal salary for several weeks or months while the employee is disabled.

For employers with **self-funded disability plans** or retirement plans with benefits based on disability determinations, plan documents and summary plan descriptions will need to be updated and new complaint procedures will need to be put into place.