

## ERISA &amp; DISABILITY BENEFITS NEWSLETTER

## ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits.

For more Information about Eric Buchanan & Associates, PLLC, visit our website at [www.buchanandisability.com](http://www.buchanandisability.com).

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## ERISA STATUTE OF LIMITATIONS BY: ERIC L. BUCHANAN

Attorneys who are new to ERISA benefits claims<sup>1</sup> often ask me, "So what is the statute of limitations for this claim?" The short answer is that there is not one in the ERISA statute, but the longer answer is much more complicated, because courts will apply limitations of time found in ERISA plans, or if there is no such provision, will look to state law to create a statute of limitations ("SOL").

When an employee or former employee is denied benefits under an ERISA plan, the employee's cause of action is brought under ERISA § 502(a)(1)(B) (29 U.S.C. § 1132(a)(1)(B)). The ERISA statute does not contain a specific statute of limitations for those claims.<sup>2</sup> When a federal statute does not have a statute of limitations, courts have stated that federal courts should look to the most analogous state law statute of limitations for the analogous claim. See, e.g. *DelCostello v. Teamsters*, 462 U.S. 151, 158-160 (1983) (applying an analogous state law statute of limitation to an NLRB action where the federal statute contained none.) Courts have applied this to ERISA benefits claims, and have usually applied the statute of limitations for a state breach of contract action. See, e.g., *Meade v. Pension Appeals and Review Committee*, 966 F.2d 190, 194-195 (6th Cir. 1992) (applying the 15 year Ohio statute of limitations for breach of contract under

Ohio Revised Code § 2305.06 to anim).

However, applying the state law statute of limitations for breach of contract is not always the correct answer; courts have held that where a more specific analogous law applies that has a shorter statute of limitations, that shorter statute may apply, such as the statute for employment disputes. See, e.g. *Syed v. Hercules Inc.*, 214 F.3d 155, 159, 161 (3d Cir.2000) (applying a one-year SOL, rather than the three year SOL under Delaware law); see also, *Adamson v. Armco, Inc.*, 44 F.3d 650, 653 (8th Cir.1995) (applying Minnesota's two year SOL for an action for recovery of wages, rather than the six-year SOL for breach of contract); and *Redmon v. Sud-Chemie Inc. Retirement Plan for Union Employees*, 547 F.3d 531, 535-6 (6th Cir. 2008) (applying the Kentucky five-year statute of limitations for "an action upon liability created by a state statute" rather than the fifteen year SOL for breach of contract.)

But, and this is a very big "but," in many cases, the time period for bringing a claim may be even shorter than the state law statute of limitations. Courts have held that when the ERISA plan at question, or an insurance policy that provides an ERISA plan benefits, provides for a shorter period of limitations, that shorter period will apply.

<sup>1</sup> For purposes of this article, "ERISA benefits claims" include claims by employees or former employees who are beneficiaries or participants of ERISA benefits plans. For example, employees who have been denied long-term disability benefits, life insurance benefits, health insurance benefits or other benefits provided at work.

<sup>2</sup> ERISA provides a statute of limitations for claims for breach of fiduciary duty under ERISA § 413 (29 U.S.C. § 1113) that is the earlier of either six years from the breach or three years from when the plaintiff had actual knowledge of the breach, which is extended to six years if there was fraud or concealment.

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As the court in *Massengill v. Shenandoah Life Ins. Co.*, 459 F. Supp. 2d 656, 660 (W.D. Tenn. 2006), explained, "Courts have also recognized that in the ERISA context, as with other types of contractual arrangements, the parties may agree upon a shorter limitations period, so long as the period is not unreasonably short." See, also *Wilkins v. Hartford Life & Accident Ins. Co.*, 299 F.3d 945, 948 (8th Cir.2002); *Northlake Reg'l Med. Ctr. v. Waffle House Sys. Employee Benefit Plan*, 160 F.3d 1301, 1303-04 (11th Cir.1998); and *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 873-74 (7th Cir.1997).

When benefits are provided under an insurance policy, the policies typically contain language, such as, "a claimant cannot start any legal action earlier than 60 days after proof of loss is provided nor more than three years after the time proof of claim is required." This type of language is very common, and is required in many states in order to have a contract approved by the state department of insurance. Typically, plans require proof of loss to be filed within 90 days after the end of an elimination period. If the elimination period is 180 days, then the Plaintiff has three years and 270 days to file a claim. See, e.g., *Rice v. Jefferson Pilot Financial Ins. Co.*, 578 F.3d 450, 456 (6th Cir. 2009). Of course, these deadlines may be different, depending on the policy, so it is imperative for an attorney to obtain the actual policy as soon as possible.

However, attorneys need to be even more careful when ERISA benefits are provided through self-funded plans, where state insurance laws do not apply. When ERISA

benefits are not provided through an insurance policy, the Plan is free to place any limitation on actions, so long as the time is "reasonable;" a limitations period as short as 90 days has been held to be reasonable. *Northlake Regional Medical Center v. Waffle House System Employee Benefit Plan*, 160 F.3d 1301, 1304 (11th. Cir. 1998).

One more confusing issue arises in ERISA plans, because it is not always clear when the clock for the statute of limitations or the contractual period of limitations begins to run. Under ERISA, claimants are normally required to exhaust administrative remedies before they can bring an action. While some courts have held that the contractual period of limitations should not begin to run until the plaintiff has the right to file suit after administrative remedies are exhausted, other courts have held that the contractual period of limitations runs in accordance with the terms of the plan or policy, see, e.g. *Rice, supra*, so that when administrative remedies are exhausted, the plaintiff may have much less than three years to start a law suit.

The bottom line is that attorneys who are helping clients who have been denied ERISA benefits need to obtain a copy of the ERISA plan from the Plan Administrator very early in the process, calculate the time period under the plan, and be sure to file at the earliest possible time. Because the rules for administrative exhaustion and the limitations on time to file suit in ERISA cases are so harsh, attorneys should learn these rules early on in order to best represent clients with ERISA claims.

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### ERIC BUCHANAN & ASSOCIATES, PLLC UPCOMING CLE SPEAKING ENGAGEMENTS

Eric Buchanan will be speaking at the Tennessee Association for Justice Seminar on ERISA and Subrogation claims in Johnson City, TN on December 11, 2009.

Eric Buchanan will be speaking at the Tennessee Association for Justice Annual Review & Ethics Seminar on Subrogation claims in Nashville, TN December 17, 2009.

Eric Buchanan will be speaking at the NOSSCR Social Security Disability Spring Conference on ERISA LTD claims to be held in New Orleans, LA May 12-15, 2010.

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### NEED A SPEAKER?

The attorneys at Eric Buchanan & Associates are available to speak to your organization regarding Social Security Disability, ERISA Long-term Disability, Group Long-term Disability, Private Disability Insurance, ERISA Benefits, Denied Health Insurance Claims and Life Insurance Claims. Contact Molina Haynes, Office Manager at (423) 634-2506 or via email at [mhaynes@buchanandisability.com](mailto:mhaynes@buchanandisability.com)

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