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ERISA & DISABILITY BENEFITS NEWSLETTER

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The Disability Insurance Team at Eric Buchanan & Associates helps individuals nationwide who have been denied disability insurance benefits and employee benefits. Our insurance and employee benefits team helps people apply for, or fight denials of, disability insurance benefits, life insurance, health insurance, and similar insurance benefits.

For more information, visit our website at buchanandisability.com.
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THE DEPARTMENT OF LABOR'S UPDATED COVID-19 REGULATIONS CLARIFY ERISA DEADLINE EXTENSIONS - BY: KACI GARRABRANT

Insurance claimants under the Employee Retirement Income Security Act ("ERISA") have extra time to make their claims right now due to the COVID-19 crisis. ERISA is a federal law that applies to insurance claims for benefits people usually get from work, like disability health or life insurance. It typically has relatively short deadlines that apply to claims, but because of the COVID-19 crisis, the Department of Labor ("D.O.L.") gave claimants more time to provide evidence that supports their claim. Many claimants had an opportunity to gather evidence and submit it in favor of their claims that otherwise might not have had that chance because of COVID-19 related disruptions.

ERISA applies to employee welfare benefit plans. 29 U.S.C. § 1134. These plans are typically insurance plans that a participant gets through work or a union and often provide benefits like health, life, disability, and long-term care insurance. ERISA provides certain rules for the administration of claims. ERISA

also gives the D.O.L. the authority to make rules that govern the administration of these claims. The D.O.L. rules set minimum requirements for reasonable claims handling procedures, including deadlines for submitting evidence and making decisions on claims. See 29 C.F.R. §2560.503-1. For example, under the ERISA regulations, once an employee submits a claim for disability benefits, the claims administrator has 90 days to decide. 29 CFR §2560.503-1(f)(1). When the claimant's application is denied, he has 180 days to appeal. After that, the claims administrator has 45 days to decide, but it may take one additional 45-day extension for a good cause.¹ During this administrative period, both parties often gather opinions and medical records from the claimant's treating providers, obtain reviews from vocational experts, and gather other types of evidence.

Like almost everything in 2020, the pandemic disrupted the evidence-gathering process. Doctors'

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offices closed, insurers' workers transitioned to working entirely from home, and mail delivery was delayed. Many claimants lacked access to treatment and testing as a result of the closures because they could not go into doctors' offices or get independent examinations like independent medical exams or functional capacity exams in person. Claimants with immunodeficiencies especially faced hardship because even leaving home to obtain treatment from doctors who were open became a scary experience. Likewise, insurers and other plan administrators faced problems; getting evidence from doctors was difficult when the offices were closed; communication was difficult when employees were not working in the office or were sick with COVID-19. The free flow of information was disrupted, necessitating action by the D.O.L.

The D.O.L. released regulations on March 1, 2020, that provided relief from the timeframes set out in ERISA to beneficiaries of ERISA plans in response to the COVID-19 crisis. ERISA grants the Secretary of Labor the authority to provide for different timeframes when faced with a national public health emergency. The statute provides that the secretary may prescribe an additional period of up to a year in the event of an emergency. It is unlikely that the Secretary of Labor could foresee that the COVID-19 pandemic and many of the issues that impact claimants and plans would continue well past the first year of the national emergency. The March 2020 guidance thus expanded the timeframes to give claimants relief from the deadlines up to 60 days after the end of the national emergency.

When it became evident that the emergency declaration would continue beyond one year, the D.O.L. released updated guidance clarifying the COVID-19 extensions that it previously granted in 2020.² The update reads:

Individuals and plans with timeframes that are subject to the relief under the Notices will have the applicable periods under the Notices disregarded until the earlier of (a) 1 year from the

date they were first eligible for relief, or (b) 60 days after the announced end of the National Emergency (the end of the Outbreak Period). On the applicable date, the timeframes for individuals and plans with periods that were previously disregarded under the Notices will resume. In no case will a disregarded period exceed one year.

U.S. Department of Labor ERISA disaster relief Notice 2021-01.

For example, someone who would have had a deadline of March 2, 2020, to submit their appeal would now have a deadline of March 2, 2021, plus 180 days, which is August 29, 2021, or one year from the date they became eligible for relief plus the standard period for responding to an appeal. This is the shorter period because the national emergency remains ongoing as of August 2021, so 60 days from the end of the national emergency will come on a future date after August 29, 2021.

However, with the increase in vaccinations and the decrease in COVID-19 cases and deaths throughout 2021 and most states relaxing COVID-19 restrictions, it is conceivable that the shorter period for some claimants in the near future would be 60 days after the end of the national emergency. On the other hand, if new variants of the COVID-19 virus prompt the federal government to extend the state of emergency beyond 2021, the guidance may be subject to change as conditions change. It is difficult to predict what will happen next in the context of the pandemic and the government's pandemic response. It is crucial to pay attention to the timing of any announcements regarding the end of the national emergency and make sure to apply the applicable rule to the deadline. Thus, the best practice is to regularly check the D.O.L.'s website for announcements and remain up to date on any changes to the national state of emergency status.

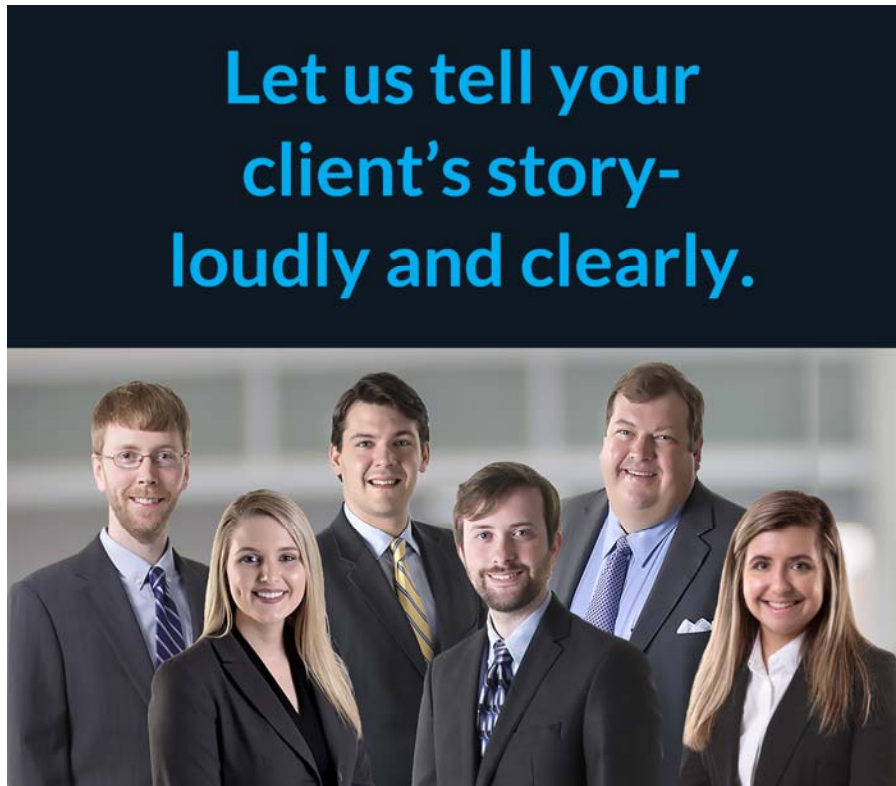
Endnotes

¹ Different deadlines apply to other types of claims under ERISA, such as health insurance claims or claims for emergency health care. The disability deadlines are given as an illustration, but the COVID-19 pandemic and the DOL rules impact all claims under ERISA. For more on applicable deadlines for other claims, see 29 CFR §2560.503.1 generally.

² The President's proclamation of a national emergency can be found at 85 FR 26351 (May 4, 2020).

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[Eric Buchanan & Associates, PLLC](#) is a boutique plaintiffs' firm located in Chattanooga, Tennessee. We help individuals nationwide obtain disability insurance benefits and other ERISA employee welfare benefits (such as life, health or disability benefits offered through work). Attorneys are our number one source of cases. If you have a client who could use our help, we would appreciate your referral.



**We appreciate the opportunity to work with you on any of these cases.
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The attorneys at Eric Buchanan & Associates, PLLC are available to speak to your organization regarding ERISA long term disability, group long term disability, private disability insurance, ERISA benefits, denied health insurance claims and life insurance claims.

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