



ERIC BUCHANAN & ASSOCIATES

DISABILITY INSURANCE ATTORNEYS

ERISA & DISABILITY BENEFITS NEWSLETTER

ABOUT OUR FIRM

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.

Contact our intake team at intaketeam@buchanandisability.com.

VOLUME 14, ISSUE 5, AUGUST 2022



Hudson T. Ellis, Eric L. Buchanan, R. Chandler Wilson,
Noah A. Breazeale, Audrey C. Dolmovich, & Kaci Garrabant

AN UPDATE ON COVID-19'S IMPACT ON DEPARTMENT OF LABOR REGULATIONS AND LONG TERM DISABILITY CLAIMS ~ BY KACI GARRABRANT

Insurance claimants under the Employee Retirement Income Security Act ("ERISA") continue to have extra time to make claims right now due to the COVID-19 pandemic. 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.

In an earlier article, we discussed the extra time that insurance claimants under the Employee Retirement Income Security Act ("ERISA") became entitled to during the COVID-19 pandemic.² To summarize the changes, 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 claim-

ERISA & DISABILITY BENEFITS NEWSLETTER

ants 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 2020.³ 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.

Although COVID-19 related regulations have loosened across the country, the D.O.L. extensions remain in place. On February 18, 2022, President Biden extended the National Emergency Concerning the Coronavirus Disease 2019 because “the COVID-19 pandemic continues to cause significant risk to the public health and safety of the Nation.”⁴ Practically, this means that the D.O.L. guidelines that provide claimants extra time remain effective, and claimants have extra time to respond beyond the standard 180 days that are normally available.

However, after President Biden issued his statement extending the National Emergency, the Senate narrowly passed a resolution to end the National Emergency due to the COVID-19 pandemic. Although there has been no further action on this resolution, and the D.O.L. has not released any information suggesting that its COVID-19 extension deadlines are no longer in effect, many other guidelines have been allowed to lapse or phase out as the COVID-19 pandemic enters its second year. For this reason, it is critically important to pay attention to any updates from the D.O.L., Congress, and the President regarding the end date for the National Emergency.

To illustrate the importance of these dates, consider a claim for someone who would have had a deadline of April 2, 2021, to submit their appeal. They would now have a deadline of April 2, 2022, plus 180 days, which is September 29, 2022, 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 June 30, 2022. But, if the National Emergency were to end on July 1, 2022, the deadline would be shortened to 60 days from that date, or August 30, 2022. In that situation, a claimant relying on the COVID-19 extension for their deadline would run the risk of missing the opportunity to submit additional evidence if they were not aware of the end of the national emergency.

Ultimately, the D.O. L's COVID-19 extensions currently provide claimants additional time to gather and submit crucial evidence in their claims. Even as other provisions related to COVID-19 have been loosened or lifted, these extensions remain in place, as does the National Emergency. But, in the ever-changing landscape of COVID-19 related regulations, it is more important than ever to stay abreast of developments from the D.O.L. and any announcements ending the National Emergency.

End Notes:

¹Different 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.

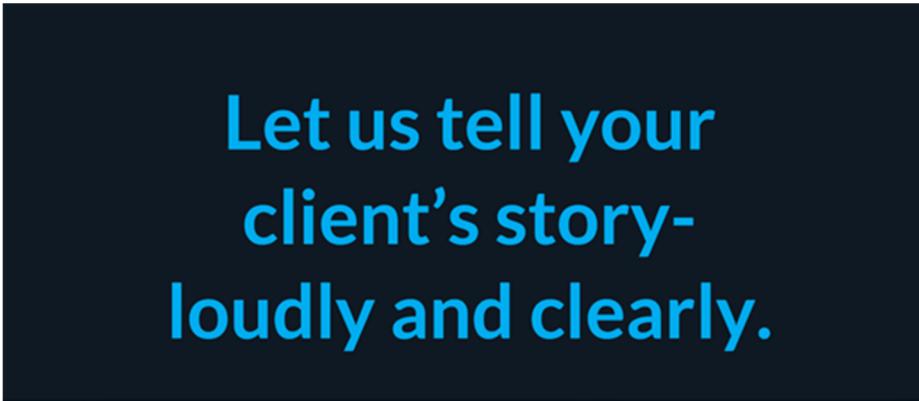
²Please see <https://www.buchanandisability.com/helpful-resourcesandarticles/attorney-newsletters/the-department-of-labors-updated-covid-19-regulations-clarify-erisa-deadline-extensions/> for the original article.

³The President's proclamation of a national emergency can be found at 85 FR 26351 (May 4, 2020).

⁴The President's Notice extending the National Emergency can be found at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/18/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-2/#:~:text=The%20COVID%2D19%20pandemic%20continues,effect%20beyond%20March%202022.>

ERISA & DISABILITY BENEFITS NEWSLETTER

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.



Let us tell your
client's story-
loudly and clearly.



We appreciate the opportunity to work with you on any of these cases.

Contact our intake team at intaketeam@buchenandisability.com.

NEED A SPEAKER?

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.

Eric Buchanan & Associates, PLLC
414 McCallie Avenue • Chattanooga, Tennessee 37402
PO Box 11208 • Chattanooga, Tennessee 37401
telephone (423) 634-2506 • fax (423) 634-2505 • toll free (877) 634-2506
intaketeam@buchenandisability.com • buchenandisability.com
