

Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans

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Additional guidance regarding deadline suspensions for COBRA elections, claims, and appeals

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On April 28, 2020, the Departments of Labor and Treasury and the Internal Revenue Service jointly issued guidance suspending certain deadlines related to electing and paying for COBRA continuation coverage, enrollment of a new spouse or child, submission of claims, and the appeal of a denial of a claim. These guidelines were published in the Federal Register on May 4, 2020.

The suspensions of deadlines in the guidance are based on the “Outbreak Period,” which is defined as the period from March 1, 2020, until 60 days after the federal government declares the end of the National Emergency, or other such date announced by the agencies, but limited to one year, meaning that once the suspension period ends, plan participants will be permitted only the number of days specified in the plan (typically 60 days in the case of a COBRA election) to elect COBRA coverage, add a new spouse or child, submit a claim, or appeal a denied claim.

On February 26, 2021, the Departments of Labor and Treasury and the Internal Revenue Service jointly issued additional guidance regarding the deadline extensions, particularly regarding the one-year limit.

According to the additional guidance, the deadline suspensions apply until the earlier of the following:

- (1) One year from the date an individual was first eligible for relief.
- (2) The end of the Outbreak Period.

The initial guidance issued on April 28, 2020, suggested that the one-year limit was based on the fixed time period March 1, 2020, through February 28, 2021. However, the additional guidance specifies that the one-year limit is not based on the aforementioned fixed time period, but rather the date a specific participant becomes eligible for relief.

Below are three examples:

Example 1: Suppose a participant loses coverage on March 1, 2020, in a COBRA-qualifying event. The one-year deadline suspension period would end on February 28, 2021, even though the Outbreak Period has not ended. Based on the suspension of deadlines, the participant must elect COBRA coverage by April 29, 2021.

Example 2: Suppose a participant loses coverage on March 1, 2021, in a COBRA-qualifying event and the Outbreak Period ends on May 31, 2021. Based on the new guidance, the requirement to elect COBRA within 60 days would be suspended until June 1, 2021, and the participant would have until July 30, 2021 (60 days after the end of the Outbreak Period) to elect COBRA coverage.

Example 3: Suppose a participant loses coverage on March 1, 2021, in a COBRA-qualifying event and the Outbreak Period does not end until after February 28, 2022. Based on the new guidance, the requirement to elect COBRA within 60 days would be suspended for one year until February 28, 2022, and the participant would have until April 29, 2022 (60 days after the end of one year) to elect COBRA coverage.

Potential impact on plan sponsors

SELECTION ISSUES

Because COBRA premiums can be costly, many qualified beneficiaries may decide to delay COBRA enrollment and thus avoid paying COBRA premiums unless they incur claims expenses that exceed the cost of the COBRA premiums that would have been owed for the months of coverage that were deferred between first becoming eligible for COBRA coverage and the decision to elect. Such decision making, referred to as adverse selection, may result in increased plan costs than otherwise expected. Proposed legislation that would provide qualified COBRA beneficiaries with a subsidy of up to 85% of COBRA premiums would be welcome relief for such beneficiaries, but could result in an increase in the number of beneficiaries applying for COBRA coverage long after they initially qualified.

ADMINISTRATIVE BURDEN

Plan administrators will carry an additional burden of how to handle claims submitted during this extended period, and must monitor how the deadline extensions apply on an individual participant basis. They may not know for several months whether an individual will ultimately pay for coverage for the applicable time period or not. There may also be significant claims submitted for reimbursement long after being incurred by those who delay election.

Based on this updated guidance plan sponsors will need to continue to monitor this through the end of the Outbreak Period.



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