

# EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION ALERT

December 2018

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*A previous version of this client alert was sent out in March of this year. We are sending the following update as a reminder that we are advising clients to proceed to amend their plan documents in order to reflect the updated rules for processing claims for benefits that are payable upon disability.*

## **New Rules Regarding Claims for Disability Benefits under Retirement Plans**

Effective April 2, 2018, new rules became applicable to disability benefits that are handled pursuant to ERISA's claims procedures. Retirement plans that provide benefits on account of disability or vest benefits as a result of disability will ordinarily be subject to these new rules. These new rules would not ordinarily apply in the event that, under the plan's provisions, a determination of disability depends entirely upon the determination made by the Social Security Administration or another independent third party.

The new rules include the following changes:

- 1. Required Notifications.** A denial of a claim, either at the initial stage or on appeal, must include, in addition to the information required under the previous rules, an explanation of why the claim is being denied, including, if applicable, an explanation of why the plan did not agree with a determination made by a health care professional or the Social Security Administration that was communicated by the claimant. In addition, a notice of a denial of a claim for a disability benefit, either at the initial stage or on appeal, must include copies of internal rules, guidelines, protocols, standards or other criteria of the plan that were used in denying the claim or a statement that no such items were used. Also, an initial denial of a claim for disability benefits must include a statement that the claimant is entitled to receive, upon request, free of charge, copies of any relevant documents that were considered by the plan, and a denial of an appeal regarding a disability benefit claim must include an explanation of any limitation imposed by the plan on the period in which the denial may be contested in litigation.
- 2. Right to Review and Respond to New Information Before Final Decision on Appeal.** Pursuant to the updated rules, new requirements apply to plans that, on appeal of the denial of a disability benefit claim, consider information that was not taken into account when the claim was previously denied. In this situation, the claimant must be given notice of the new information and provided with an opportunity to respond to the plan before a decision is made with respect to the appeal.
- 3. Avoiding of Conflicts of Interest.** An employee of the plan sponsor may not be rewarded for enabling a disability benefit claim to be denied.

4. **Deemed Completion of Claims Process.** If there is a failure by a plan to adhere to the disability claims procedures, a claimant is deemed to have exhausted the plan's administrative remedies and, therefore, is ordinarily eligible to commence litigation regarding his or her claim.

In our previous communication we advised employers to be certain that, effective April 2, 2018, their retirement plans were administered in accordance with the new rules with respect to claims for disability benefits provided by the plans. We recommend that clients proceed to amend their plan documents in order to reflect the updated rules for processing claims for benefits that are payable upon disability. Please let us know if you would like us to prepare any necessary amendments to your plan.

If you have any questions regarding the new disability claims procedures, please do not hesitate to contact us.

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