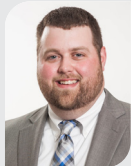


## Employers, check your plan documents for claims procedures



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Employers and employee benefit plans have long benefited from the judicially created “exhaustion” doctrine with respect to plans that are subject to the Employee Retirement Income Security Act (ERISA). This doctrine requires that claimants for plan benefits must exhaust all administrative remedies (i.e., the plan’s claims procedures) before they can pursue a claim for benefits in the courts. A claimant’s failure to exhaust his or her administrative remedies can result in a dismissal of a claimant’s case or final denial of a benefit claim.

There are a few exceptions to the exhaustion doctrine. One can apply when a plan fails to establish and maintain a reasonable claims procedure as required by ERISA. If so, a claimant is deemed to have exhausted all administrative remedies even if he or she does not fully utilize a plan’s claims procedures. A recent case from the Sixth Circuit Court of Appeals, *Wallace v. Oakwood Healthcare, Inc.* (March 31, 2020) (*Oakwood*), sheds some light on what it means to establish and maintain a “reasonable claims procedure.” Although a court decision from the Sixth Circuit does not bind employers or employee benefit plans in the Seventh Circuit (which includes Illinois, Indiana and Wisconsin), decisions in one federal circuit court can persuade other circuits.

At the heart of *Oakwood* was whether an insurance company could avail itself of the exhaustion doctrine for a claimant’s failure to follow the claims procedure for a disability insurance policy. The Court found that the claimant was deemed to have exhausted all administrative remedies because the insurer’s claims procedures were not included in the underlying plan document. The Court did not address whether including claims procedures in a summary plan description would be enough for an employee benefit plan to take advantage of the exhaustion doctrine because the insurer did not produce a summary plan description for the record. However, the Court implied that claims procedures should be included in both the plan document and summary plan description given the Court’s holding “that for a plan fiduciary to avail itself of this Court’s exhaustion requirement, its underlying plan document must—**at minimum**—detail its required internal appeal procedures.” The insurance company argued that the provision of the claims procedures with the insurer’s notice of benefit denial was enough to allow a defense based on the exhaustion doctrine. However, the Court rejected that argument.

### Employer considerations

Considering *Oakwood*, employers should review their plan documents and summary plan descriptions and consider whether to include the claims procedures in (or with) both documents. Additionally, employers should consider adding a plan provision that requires a claimant to exhaust the administrative remedies. In that case, the plan may have an additional line of defense to impose an exhaustion requirement even if courts abolish the exhaustion doctrine as it currently exists.

*The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.*