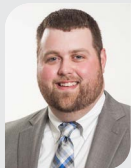


## Employers must be aware of extended welfare and retirement plan deadlines



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The U.S. Department of the Treasury (Treasury) and U.S. Department of Labor (DOL) recently issued a [joint notice](#) announcing “the extension of certain timeframes under the Employee Retirement Income Security Act [(ERISA)] and the Internal Revenue Code [(IRC)] for group health plans, disability and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 National Emergency.” This notice affects special enrollment periods with respect to health plans, ERISA claims procedures and Consolidated Omnibus Budget Reconciliation Act (COBRA) obligations, including:

- The deadline to provide a COBRA election notice
- The timing of an individual to elect COBRA continuation coverage
- The deadline to make timely COBRA premium payments
- Individual notification requirements regarding a qualifying event or determination of disability

The joint notice is retroactive to March 1, 2020, the date that President Donald Trump declared the existence of a national emergency as a result of the 2019 novel coronavirus (COVID-19) outbreak. The joint notice will remain in effect through the outbreak period, which lasts until 60 days after the announced end of the national emergency or a date announced by the agencies in a future notification.

This notice requires group health plans, disability and other employee welfare benefit plans, as well as employee pension benefit plans that are subject to ERISA or the IRC, to disregard the outbreak period when determining any of the following:

- The 30-day period (or 60-day period, if applicable) to request special enrollment
- The 60-day election period for COBRA continuation coverage
- The deadline for making COBRA premium payments
- The deadline for individuals to notify the plan of a qualifying event or determination of disability
- The date by which individuals must file a benefit claim under the plan’s claims procedure
- The date by which claimants must file an appeal of an adverse benefit determination under the plan’s claims procedure
- The date by which claimants must file a request for an external review after receipt of an adverse benefit determination or final internal adverse benefit determination
- The date by which a claimant must file information to perfect a request for external review upon a finding that the request was not complete

*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.*

Additionally, Treasury and DOL provided that group health plans, and their sponsors and administrators, can disregard the outbreak period when determining the deadline for providing a COBRA election notice. The joint notice also provides seven examples of how its guidance should be applied. Further, the agencies stated they will “continue to monitor the effects of the Outbreak and may provide additional relief as warranted.”

### **The impact on employers**

In addition to the obvious new administrative headaches, the joint notice may have an adverse financial effect on employers. The extended COBRA election period allows individuals more time to look back at their claims experience to determine if electing COBRA is worthwhile. Since COBRA must be offered on a retroactive basis, the joint notice worsens the adverse selection problem associated with the retroactive nature of COBRA elections. Furthermore, the delay in the deadline for COBRA premium payments will lengthen the amount of time that employers have to front the cost of COBRA coverage.

Group health plan sponsors should consider whether to modify their existing COBRA notices to reflect the joint notice's changes. Similarly, changes may be needed to claim denials to reflect the delayed deadline for appeals.