

Employers Prepare for Thawing ERISA Deadlines

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With the pandemic winding down, deadlines for employee benefit plans governed by the Employee Retirement Income Security Act (ERISA) will be resuming. Two different emergencies affect employer-sponsored group health plans: the national emergency and the public health emergency. Recently, the White House [announced](#) that both the national emergency and the public health emergency are ending on May 11, 2023.

National Emergency

In May 2020, the U.S. Department of Labor (DOL) and Internal Revenue Service (IRS) [issued a joint rule](#) that extended, or tolled, several timeframes for ERISA participants and beneficiaries. The relief [suspended various timeframes](#) during the COVID-19 national emergency plus an additional sixty days. The agencies referred to this period as the “outbreak period.” The DOL [clarified the effect of the relief](#) in Employee Benefits Security Administration (EBSA) [Disaster Relief Notice 2021-01](#), published on February 26, 2021.

The following timeframes are covered by the relief:

- The thirty- or sixty-day Health Insurance Portability and Accountability Act (HIPAA) special enrollment period
- The sixty-day health care continuation coverage election period under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
- The thirty- and forty-five-day COBRA premium payment deadlines
- The sixty-day deadline to notify COBRA administrators of certain qualifying events and disability determinations
- The deadline to file a benefit claim under the plan’s claims procedures
- The deadline to appeal an adverse benefit claim determination under the plan’s claims

- The four-month deadline to request an external review of an adverse benefit determination
- The deadline to perfect an incomplete request for external review (the later of the original four-month period or forty-eight hours after receiving notice of the incomplete filing)

Despite the fact that the outbreak period has now lasted nearly three years, the DOL has clarified that participants and beneficiaries are entitled to a maximum relief period of only one year for each deadline that was tolled. This means that a participant's deadline begins to run on the earlier of: (1) one year from the date the individual is first entitled to relief, or (2) the end of the outbreak period (sixty days after the COVID-19 national emergency ends). With the national emergency ending on May 11, 2023, the outbreak period will end on July 10, 2023.

Although the end of the outbreak period will be the same for each participant and beneficiary, not every deadline will be, as they range from thirty days (HIPAA special enrollment and COBRA premium payment deadlines) to a full year (a common plan deadline for participants to file a benefit claim). However, due to the mass nature of the timeframe beginning dates (the end of the outbreak period), employers, their third-party administrators, COBRA administrators, and other service providers may end up dealing with several "batched" requests from participants, especially for some of the shorter deadlines and more common requests such as HIPAA special enrollment applications and COBRA elections.

Public Health Emergency

In addition to the timeframes tied to the national emergency, additional coverage requirements applied to plans during the public health emergency. During the public health emergency, employer-sponsored plans have been required to [cover the cost of COVID-19 diagnostic testing](#) without cost sharing. Before the public health emergency ends on May 11, 2023, plan sponsors may want to consider whether they will continue offering these diagnostic tests without cost sharing. Some plan sponsors may want to consider charging copays or applying coinsurance with respect to these items. If a plan sponsor wants to make a change midyear, then participants will need to be notified about the change in coverage.

There are a number of steps employers can take to prepare for the end of the national emergency and the public health emergency. They may want to meet with their service providers and internal teams to discuss strategies for managing possible spikes in participant requests thirty and sixty days after the outbreak period. If certain requests are expected to be voluminous, employers can grant a temporary extension for one or more of the affected deadlines. As is so often the case, good communication with employees may help to smooth this transition. Notifying employees about the end of the extended deadlines, including the exact deadlines affected and reminders about the regularly applicable deadlines, could assist employees in understanding their responsibilities and reduce employee questions about missed deadlines. In addition, good communications about the status of free COVID-19 diagnostic testing may reduce questions from participants.

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