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New Disability Regulations: Wait-and-See or Move Forward?

On December 19, 2016, the DOL issued final regulations modifying the claims procedures for adverse determinations relating to disability claims under ERISA. Most of the changes mirror the additional disclosure requirements that apply to health plan claims under the Affordable Care Act. To allow employers, insurers and claims administrators time to comply, the final regulations apply to claims for benefits filed on or after January 1, 2018.

At the end of July, the DOL announced that it is reviewing these new regulations "for questions of law and policy." For those who administer ERISA plans, the uncertainty is unwelcome because decisions with respect to making changes to processes and employee communications must be made soon.

The final disability regulations certainly do not have the high profile that the fiduciary rules had when the fiduciary rules also underwent administrative review. But, two outcomes are possible. First, the final regulations may not be revised or delayed as a result of the administrative review. Alternatively, it is certainly possible that some portion of the regulations might be revised or delayed.

In spite of this uncertainty, we think it is prudent to move forward with making changes to comply with the final regulations. It is unlikely that the final regulations will be revised or withdrawn in their entirety, and some form of the final regulations should still apply beginning in 2018. Plan sponsors should continue to work with their disability claim administrators to make certain that the claim administrators are on track to comply with the final regulations for processing claims and appeals. Summary plan descriptions and other documentation explaining the disability benefits must also be revised to take into account the final regulations

At the very least, in the very unlikely event the final regulations are withdrawn in their entirety, taking these steps now as part of the claims and appeals process will reduce the likelihood of litigation and will place the disability plan in a better position if a court is asked to review the outcome of an appeal.