

# FINAL DISABILITY CLAIMS PROCEDURES BECOME EFFECTIVE ON APRIL 1, 2018

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**Practices & Industries**

Employee Benefits

The federal Department of Labor issued final regulations on December 16, 2016 strengthening protections for disability claimants. The new disability claims rules apply to any type of plan, including retirement and severance plans, where benefits or rights are conditioned upon a finding of disability. The disability claims procedures, however, are not applicable to accidental death and dismemberment benefit programs. The disability claims procedures only apply to disability determinations made by a plan, not determinations made independently by another party, such as the Social Security Administration, or another plan of the employer.

With respect to disability claims filed on and after April 1, 2018, the following procedures will apply in addition to the current timeframes and other requirements under Section 503 of the Employee Retirement Income Security Act of 1974 (ERISA):

- Claims and appeals must be adjudicated in a manner designed to ensure independence and impartiality of the persons involved in making the benefit determination, such as claims adjudicators, or medical or vocational experts.
- Benefit denial notices must contain a complete discussion of why the plan denied the claim and the standards applied in reaching the decision, including the basis, if any, for disagreeing with the views of health care professionals, vocational professionals, or with disability benefit determinations by the Social Security Administration.
- Initial benefit denial notices must include a statement that the claimant is entitled to receive, upon request, the entire claim file and other relevant documents.
- Initial benefit denial notices must include any internal rules, guidelines, protocols, standards or other similar criteria of the plan that were used in denying a claim, or contain a statement that none were used.
- Claimants must be given notice and a fair opportunity to respond before a denial at the appeals stage that is based on new or additional evidence or rationales.
- The plan must not prohibit a claimant from seeking court review of a claim denial based on a failure to exhaust administrative remedies if the plan failed to comply with significant claims procedure requirements (“deemed exhaustion”).

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- Rescissions of coverage, except for rescissions for non-payment of premiums, must be treated as adverse benefit determinations triggering the plan's appeals procedures.
- Appeal determinations must include a description of any applicable contractual limitations period and its expiration date.
- Required notices and disclosures issued under the claims procedure must be written in a culturally and linguistically appropriate manner.

Plan sponsors should evaluate their welfare and retirement plans to determine whether compliance with the disability regulations is required. Plan sponsors should then work with their legal advisors to ensure their plans and forms are amended in conformity with the new regulations for any disability claims filed on or after April 1, 2018.