

DEPARTMENT OF LABOR ISSUES SIGNIFICANT GUIDANCE ON COVID-19 WELFARE PLAN EXTENSIONS

Hodgson Russ Employee Benefits Alert
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On February 26, 2021, the Department of Labor (“DOL”) issued Disaster Notice 2021-01, conveying much-awaited and somewhat surprising guidance on the extensions of COBRA, HIPAA special enrollment and ERISA claims deadlines during the COVID-19 Outbreak Period.

Last April, the DOL and IRS issued a joint rule “disregarding” the period from March 1, 2020 through the date 60 days after the end of the coronavirus National Emergency (“Outbreak Period”) for purposes of calculating the deadlines for COBRA elections and premium payments, notifications of HIPAA special enrollment events, and internal and external claims procedures. (See our article [here](#)).

Because the maximum length of benefit plan deadline extensions authorized by the CARES Act is one year, uncertainty surrounded whether the welfare plan deadlines would start running again on February 28, 2021.

The DOL’s guidance now clarifies that the Outbreak Period is ongoing and extensions are to be measured on a person-by-person basis. Specifically, the relief ends the earlier of:

- (a) 1 year from the date the person was first eligible for relief from a deadline;
- or
- (b) 60 days after the announced end of the National Emergency.

The following examples will help illustrate how this guidance works in the case of a COBRA election deadline extension:

- *Qualifying COBRA Events Before March 1, 2020* - If a qualified beneficiary’s (“QB”) 60-day COBRA election period started January 5, 2020, her election deadline was delayed as March 1, 2020. The QB’s relief period would end February 28, 2021 (the lesser of one year or the end of the National Emergency) and she would have the remaining balance of her 60-day election period – 4 days – to make an election.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

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- *Qualifying COBRA Events Between March 1, 2020 and February 28, 2021* - If a QB experiences a COBRA qualifying event on June 1, 2020 and receives all required notices, then usually she would have 60 days to make an election. This relief, however, delays the election period for the lesser of one year or 60 days after the announced end of the National Emergency. Assuming the National Emergency does not end by April 2, 2021, the QB's 60-day election period will begin June 1, 2021.
- *Qualifying COBRA Events After February 28, 2021* - If QB's election period starts on August 1, 2021, her election deadline will be delayed the same day, assuming the National Emergency remains in effect. Her one-year relief period would end July 31, 2022, and her 60-day election period would start August 1, 2022. However, if the National Emergency is declared over on October 1, 2021, QB's relief period would end on November 30, 2021 (60 days after the end of the National Emergency), so her 60-day election period would start on November 31, 2021.

The DOL suggests that welfare plan administrators notify affected participants, and reissue or supplement notices that are no longer accurate in light of this guidance.

To discuss these developments in greater depth and how they may affect you, please contact [Amy Walters](tel:716.848.1481) (716.848.1481), [Mike Flanagan](tel:716.848.1480) (716.848.1480), or any member of our [Employee Benefits](#) practice.

EBSA Disaster Relief Notice 2021-01 - <https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/planadministration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf>