

Client Alert

March 2021

Department of Labor Updates COVID-19 Relief Guidance

The Department of Labor (“DOL”) recently issued [EBSA Disaster Relief Notice 2021-01](#) (the “2021 Relief Notice”) to provide additional COVID-19 relief guidance that will be applicable upon the expiration of prior extended participant deadlines.

In 2020, the DOL issued EBSA Disaster Relief Notice 2020-01, and the DOL, the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) issued a joint notice (collectively, the “2020 Relief Notices”) that provided COVID-19 relief. Specifically, the 2020 Relief Notices suspended certain health and welfare benefit plan deadlines from March 1, 2020 until 60 days after the end of the COVID-19 national emergency, as described more fully in our earlier [alert](#). Although the COVID-19 national emergency is still in effect, the relief provided by the 2020 Relief Notices cannot, by statute, be extended for more than one (1) year, and this one-year period expired on February 28, 2021.

Accordingly, the DOL issued the 2021 Relief Notice in coordination with the U.S. Department of Health & Human Service and the IRS. The 2021 Relief Notice suspends deadlines on a case-by-case basis, subject to the one-year limit (or 60 days after the end of the COVID-19 national emergency should that happen earlier). For example, if a qualified beneficiary would have been required to make a COBRA election by March 1, 2020, such requirement was delayed until February 28, 2021. However, if a qualified beneficiary would have been required to make a COBRA election by March 1, 2021, such requirement is delayed until March 1, 2022.

Despite the compliance nightmare caused by determining relief on a case-by-case basis, plan fiduciaries are not relieved of their duties under ERISA and the Internal Revenue Code and must act “reasonably, prudently, and in the interest of the workers and their families.” The 2021 Relief Notice illustrates, by way of example, that plan fiduciaries should (i) inform each plan participant about the end of each participant’s relief period, (ii) reissue disclosures if need be; and (iii) make participants aware of other

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Employee Benefits

health insurance options that may be available. There should be reasonable accommodations made to prevent the loss of coverage or delay in benefits and plan fiduciaries might consider measures to minimize the loss of benefits due to a failure to comply with pre-existing timeframes and deadlines.

The DOL recognizes that the COVID-19 pandemic is still disrupting many businesses, and consequently the DOL will try to aid plan fiduciaries who “acted in good faith and reasonable diligence under the circumstances” but were not able to fulfill certain requirements. Finally, the DOL, Treasury and the IRS note that additional relief guidance may be required.

We are continuously monitoring changes to health and welfare benefit programs, and we will provide updates as they become available.

Please contact the Olshan attorney with whom you regularly work or the attorneys listed below if you would like to discuss this client alert or have questions about its content.

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