eBenefits Alert: Regulation Change Affects ERISA Disability Claims Procedures

April 19, 2018

Do you have a plan that provides benefits in the event of disability? Any plan—not just long- and short-term disability plans. For example, does your retirement plan vest an employee who becomes disabled? Does it give a disabled employee enhanced benefits? Does it allow a disabled employee to get a distribution? If so, a change in the Department of Labor regulations, effective April 1, 2018, may affect you.

Which plans are affected?

Any employee benefit plan:

- that is subject to the Employee Retirement Income Security Act (ERISA);
- where the benefit (for example: vesting, benefit enhancement, or distribution date) depends on a determination of disability; and
- where **you** make the call regarding whether a participant is disabled.

If you do not make the disability determination under the plan but instead tie it to the payment of Social Security disability benefits or long term disability under your Long Term Disability Insurance Plan, then your plan is **not** affected by this change.

Help! My plan is affected! What do I need to do?

The new regulations require significant additions to the ERISA claims procedures for these disability claims. If you haven't already made the required changes to your claims procedures, *and informed your participants of the changes,* we recommend that you do so as soon as possible—and before a disability claim arises and triggers the need to apply the new regulations.

Why the rush? Will the Department of Labor penalize us if we wait until the end of the year?

No, the Department of Labor has not given us any specific guidance about the implementation of the changes and the consequences of failure to do so by the April 1, 2018, effective date.

However, the general rule for the ERISA claims procedures is that if participants are not informed of them, they do not need to follow them. This means that instead of following your procedures, *a participant can go straight to court* to get a decision. What's more, unlike with other ERISA claims, the participant may have *a greater likelihood of prevailing*.

Why did the Department of Labor make this change?

The Department of Labor did some research and concluded that there are sometimes inappropriate incentives for adverse determinations by plan administrators when it comes to disability claims. The regulations are meant to remove those incentives by ensuring a full and fair review—much in the same way as the claims regulations governing health plan benefit determinations.

Gray Plant Mooty can help. Contact Virginia Schubert for help revising your claims procedures, or for an analysis of whether you need to revise them.