

DOL Settlements Remind Employers to Avoid Collecting Premiums Until Evidence of Insurability is Approved

Alert

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The U.S. Department of Labor (DOL) announced two settlements with major insurance companies this month that highlight the importance of employers avoiding the collection of group life insurance premiums from employees until the insurer has approved them for coverage, including receipt and approval of required evidence of insurability (EOI). These settlements follow two similar agreements the DOL entered into with other insurers in 2023.

Benefit plans often require submission of EOI when employees attempt to enroll in life insurance outside of an open enrollment period or for amounts above the guaranteed issue amount. The DOL alleged that two insurance companies, Unum Life Insurance Company of America (Unum) and Lincoln Life & Annuity Company of New York and its affiliates (Lincoln), violated ERISA when they accepted premiums for group life insurance without making a decision on whether the employee submitted satisfactory EOI. In many cases, no EOI had been submitted at all. When presented with a claim for plan benefits from beneficiaries of the covered individual, the insurers denied the claims on the grounds that EOI was not provided. The DOL took the position that the insurers had an affirmative duty under ERISA to make timely coverage decisions and to not accept premiums until coverage was approved, regardless of what the plan document provided. In a [press release announcing the settlement with Lincoln](#), the DOL noted that in some cases Lincoln had accepted premiums for covered employees for years without receiving EOI.

Each of the settlement agreements contains generally the same terms, including:

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- A prohibition on denying claims solely on the basis that EOI was not submitted or approved if the insurer had accepted premiums for a certain period of time (three months for Lincoln, and 90 days for Unum).
- If Lincoln denies a claim for a reason relating to EOI, it must remit or credit to the employer any premiums paid for the coverage. If Unum denies a claim for a reason relating to EOI, it must remit the premiums to the beneficiary, the covered employee, or the employer, as appropriate.
- The insurers may not deny continuing coverage to covered employees who have paid premiums for a year or more, but have not yet provided EOI. In fact, both of the settlement agreements bar the insurer from requesting EOI any later than one year after the date on which the insurer received the first premium payment for the coverage. Any request for EOI made during this one-year period may only consider the individual's health status on the date the first premium payment was received by the insurer. If the insurer wishes to request EOI after receiving premiums, it must provide the employer with a notice to be delivered to the employee or eligible dependent.
- The insurer is required to send to its group life insurance policyholders (i.e., employers) a notice stating that: (a) employers must not collect premiums from or on behalf of any employee for coverage requiring EOI until the insurer expressly confirms that it has approved the employee's EOI; and (b) in the event that an employer collects premiums from an employee without first confirming that the insurer has approved such employee's or eligible dependent's EOI, the employer may be liable to the beneficiaries of such employee or eligible dependent.

While these settlements are between insurers and the DOL, an employer that sponsors a group life insurance plan is – like the insurer – a fiduciary with respect to such plan, and may have a fiduciary duty to avoid collecting premiums for coverage that is not in effect.

KEY TAKEAWAY

The key takeaway from these settlement agreements for an employer sponsoring a group life insurance plan is: To avoid potentially having to pay a life insurance claim out of its own pocket, the employer should have a process in place to ensure that it does not collect premiums from employees until coverage has been approved by the insurer, including approval of any EOI. Consistent with what is suggested in the terms of the settlement agreements, a number of courts have held that an employer breaches its fiduciary duty under ERISA if it collects premiums for life insurance coverage that is not in effect. In the event an insurer returns to an employer premiums collected by the employer with respect to an employee who is not covered by the group life insurance plan due to EOI issues, the employer should ensure that any portion of such premiums withheld from the employee's pay is returned to the employee (or the employee's estate, if applicable).

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