

## Publications

### *Labor and Employment Alert: DOL Green-Lights Disability Claims Regulations*

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#### CLIENT ALERT | 1.9.2018

After postponing the effective date of Obama-era regulations on claims and appeals for disability benefits, the Department of Labor **announced** on January 5, 2018 that it would allow the regulations to go into effect for claims filed after April 1, 2018.

The regulations will apply to most – but not all – claims where benefits are conditioned on a finding of disability. This may include certain benefits under retirement plans, in addition to benefits under long-term disability plans and some short-term disability plans. Note that identifying a plan with benefits conditioned on a finding of disability is only the first step: there are significant exceptions where the regulations will not apply. The regulations will not apply to:

- Benefits conditioned on a finding of disability that is made by a third party for a purpose unrelated to benefits under the plan. For example, if disability benefits under a retirement plan are conditioned on a finding of disability by the Social Security Administration or by the insurer of a long-term disability policy, the disability claims and appeals rules will not apply to the determination of disability under the retirement plan.
- Short-term disability insurance under a policy maintained solely to comply with a state disability law (required in California, Hawaii, New Jersey, New York and Rhode Island). ERISA, and thus the disability claims regulations, do not apply to such plans.
- Self-insured short term disability benefits paid out of the employer's general assets (with no employee contributions). ERISA, and thus the disability claims regulations, do not apply to such plans.

Where applicable, the regulations will:

- increase the amount of information that must be provided to a claimant during the claims and appeals process, including:
  - a copy of any specific internal rule, guideline, protocol, standard or other criteria relied upon in making an adverse benefit decision.

- documentation of the reasons for any disagreement with the treating physician.
- if the plan considers a new reason for an adverse benefit decision, require disclosure of that reason and provide a reasonable opportunity for the claimant to respond.
- require language assistance for non-English speaking claimants under some circumstances.
- prohibit a plan from considering the likelihood of a service provider denying a claim as part of any hiring, compensation, promotion, termination or similar review of a service provider.

A chart summarizing the new regulations is available [here](#).