

# DOL EXPANDS DISABILITY CLAIMS PROCEDURES WITH NEW RULE EFFECTIVE APRIL 1, 2018



By: Philip Bevan  
and Eric Marion

**A**fter substantial delay and uncertainty, the U.S. Department of Labor's proposed amendments to regulations governing the claims procedures companies must follow when handling claims for disability benefits are now effective. The new rule applies to ERISA employee benefit plans (both tax and non-tax qualified) and all claims for disability benefits under those plans received on or after April 2, 2018. Companies will need to consider whether their employee benefit plans are impacted by the rule and if so, what they must do to comply.

The expanded rule applies to all ERISA employee benefit plans which provide for disability benefits, including both employee welfare benefit plans and employee pension benefit plans, unless the disability determination is made by a party other than the plan and for a purpose that is not related to the plan (i.e., a disability determination by the Social Security Administration), except that excess benefit plans, as defined in Section 3(36) of ERISA, are excluded from the rule.

**Plans Covered.** A sample listing of plans that are covered include 401(k) plans, employee stock ownership plans, BOLI plans, supplemental executive retirement plans and deferred compensation plans that provide for disability benefits. Summary plan descriptions with respect to covered plans should

also be reviewed and revised as appropriate.

**Summary of New Requirements.** The final rule was designed to require that plans, plan fiduciaries and insurance providers comply with additional procedural protections when dealing with disability benefit claimants, including requirements relating to the processing of claims and appeals from denials of disability benefits. The rule's main provisions are enhanced disclosure requirements, modified appeals procedures and incorporation of Affordable Care Act ("ACA") standards for disability benefit claims.

## "THE EXPANDED RULE APPLIES TO ALL ERISA EMPLOYEE BENEFIT PLANS WHICH PROVIDE FOR DISABILITY BENEFITS"

- **Enhanced Disclosure Requirements.** The rule expands the categories of information that must be included in benefit denial notices at the initial claims and appeals stage. For example, benefit denial notices

must include: (1) a complete discussion of why the plan denied the claim and the standards applied in reaching the decision; (2) a statement that the claimant is entitled to receive the entire claim file and other relevant documents upon request; and (3) either the internal rules, guidelines, protocols, standards or other similar plan criteria used in denying a claim, or a statement that none of these was used.

- **Modified Appeal Procedures.** Plans may not deny ben-



efits on appeal based on new or additional evidence or rationales that were not disclosed during the initial claims stage unless the claimant is given copies of such new or additional evidence or rationales and a reasonable opportunity to respond.

- **Extension of ACA Standards:** The rule extends certain ACA standards to disability claims including: (1) claims and appeals must be adjudicated in a manner designed to ensure independence and impartiality of the persons involved in making the benefit determination; (2) certain rescissions of coverage must be treated as adverse benefit determinations that trigger the plan's claims and appeals procedures; and (3) required notices and disclosures issued under the plan's claims procedures must be written in a culturally and linguistically appropriate manner.

**Actions Required.** All claims for disability benefits will need to comply with the new requirements, and the appropriate personnel should be notified to ensure operational compliance. In addition, all employee benefit plans, which provide for disability benefits, should be reviewed to determine whether the expanded rule is applicable to the plan. If so, it is likely the disability claims procedures in such plans will need to be revised to ensure documentary compliance. The plan amendments should be effective for all claims received after April 1, 2018 such that any disability benefit

claims filed on or after April 1, 2018 are processed in accordance with the new requirements. Tax-qualified plans such as 401(k) plans and pension benefit plans administered on a calendar year basis must be amended by December 31, 2018. 🌊



**PHILIP "ROSS" BEVAN**  
IS AN ATTORNEY WITH SILVER,  
FREEDMAN, TAFF &  
TIERNAN LLP. HE CAN BE  
REACHED AT 202.295.4517  
OR RBEVA@SFTTLAW.COM.



**ERIC MARION IS AN ATTORNEY**  
WITH SILVER, FREEDMAN,  
TAFF & TIERNAN LLP. HE CAN BE  
REACHED AT 202.295.4532 OR  
EMARION@SFTTLAW.COM.

**SILVER, FREEDMAN, TAFF &  
TIERNAN LLP IS AN ASSOCIATE  
MEMBER OF PACB.**