



Regulatory Update

How the End of the Public Health Emergency Impacts Employee Benefit Plans



Many employers may have questions and concerns about the impact of the anticipated May 11, 2023 end of the federal COVID-19 National Emergency and Public Health Emergency Orders. In response, on March 29, 2023, the U.S. Department of Labor (DOL), U.S. Department of Health and Human Services (HHS), and the U.S. Department of the Treasury issued frequently asked questions (FAQ) guidance to assist employers preparing for the end of these Orders. The FAQ [guidance](#) addresses questions related to the extended deadlines for COBRA, special enrollments and group health plan claims and appeals. The FAQ guidance also addresses coverage of vaccines.

Background:

On May 4, 2020, in response to the COVID-19 National Emergency, several agencies issued a "Notification of Extensions of Certain Timeframes for Employee Benefit Plans, Participants, and Beneficiaries Affected by the COVID-19 Outbreak" (Joint Notice).

The Joint Notice stated that certain time periods and dates for HIPAA special enrollment, COBRA continuation coverage, and internal claims and appeals and external review must be disregarded (disregarded periods) when determining the due dates for certain elections and other actions by employee benefit plans subject to ERISA and the IRS Code, and participants and beneficiaries of these plans during the COVID-19 National Emergency.

The Department of Labor later clarified that the disregarded periods apply from the date each individual or plan was first eligible for relief under the Joint Notice until the earlier of (a) one year from the date they were first eligible for relief, or (b) 60 days after the announced end of the COVID-19 National Emergency. The COVID-19 National Emergency period, plus the 60 days, are referred to as the "Outbreak Period."

Among other periods and dates, the disregarded periods extended the following:

- (1) the 30-day period (or 60-day period, if applicable) to request special enrollment,
- (2) the 60-day election period for COBRA continuation coverage,
- (3) the date for making COBRA premium payments, and
- (4) the date for providing a COBRA election notice.

The Details:

Elimination of Mandated Deadline Tolling:

The anticipated end of the COVID-19 National Emergency is May 11, 2023. DOL, the Treasury Department and the IRS anticipate that the Outbreak Period will end July 10, 2023 (60 days after the anticipated end of the COVID-19 National Emergency). As of the last day of the Outbreak Period, the extensions under the emergency relief notices for timeframes that began during the COVID-19 National Emergency no longer apply.

The FAQs provide several helpful examples for eliminating the emergency extensions:

Example 1 (Electing COBRA)

Facts: Alexander works for Xylophone Manufacturing and participates in Xylophone Manufacturing's group health plan. Alexander experiences a qualifying event for COBRA purposes and loses coverage on July 12, 2023. Alexander is eligible to elect COBRA coverage under Xylophone Manufacturing's plan and is provided a COBRA election notice on July 15, 2023.

What is the deadline for Alexander to elect COBRA?

Conclusion: Because the qualifying event occurred on July 12, 2023, after the end of both the COVID-19 National Emergency and the Outbreak Period, the extensions under the emergency relief notices do not apply. The last day of Alexander's COBRA election period is 60 days after July 15, 2023, which is September 13, 2023.

Example 2 (Special Enrollment Period)

Facts: Charlie works for Zipper Manufacturing. Charlie is eligible for Zipper Manufacturing's group health plan, but previously declined participation. On April 1, 2023, Charlie gave birth and would like to enroll herself and the child in Zipper Manufacturing's plan. However, open enrollment does not begin until November 15, 2023.

When may Charlie exercise her special enrollment rights?

Conclusion: Charlie and her child qualify for special enrollment in Zipper Manufacturing's plan as early as the date of the child's birth, April 1, 2023. Charlie may exercise her special enrollment rights for herself and her child until 30 days after July 10, 2023 (the end of the Outbreak Period), which is August 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

The FAQ notes that nothing in the IRS Code or ERISA prevents a group health plan from allowing for longer timeframes for employees, participants or beneficiaries to complete these actions, and group health plans are encouraged to do so.

Next Steps:

Review the FAQs for more details including what coverage of COVID-19 vaccines and preventive services, tests and treatment is required (or encouraged) after the Public Health Emergency Order expires.

Plan sponsors should be aware of the effect that the expiration of the two emergency periods will have on their benefit plans and will need to decide whether to continue to extend benefit plan deadlines. Regardless of any decision on continuing to extend deadlines, plan sponsors should consider how to communicate with participants about these issues.

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