

COVID-19 Relief Triggers ERISA Participant Notice Requirements

[Pamela D. Kaplan](#), [Victoria E. Anderson](#)

June 18, 2020

In response to the COVID-19 outbreak, Congress, the Department of Labor (“DOL”) and the Internal Revenue Service (“IRS”) have each offered temporary relief from certain legal requirements applicable to employee benefit plans. Some of this temporary relief impacts participants’ rights under ERISA-covered employee benefit plans.

This Advisory focuses on the impact of the temporary relief on ERISA participant notice requirements, and also briefly summarizes that temporary relief.

ERISA Participant Notice Requirements

Because the relief offered to ERISA-covered plan participants in response to the COVID-19 outbreak is subject to expiration, plan sponsors should strongly consider providing participants with notice about the relief much sooner than is otherwise required under ERISA.

ERISA requires plan sponsors to provide a summary plan description (“SPD”) to participants that informs them of their rights and obligations under the plan. Plan sponsors are also required to provide participants notice of any material changes to the plan and the information required to be included in the SPD. Such notice may be delivered in the form of an updated SPD or, as is often done for minor changes, a separate summary of material modifications (“SMM”) that then serves as an addendum to the SPD.

The updated SPD or SMM must generally be provided to participants no later than 210 days after the close of the plan year in which the change was adopted. Plan sponsors with calendar year plans would therefore have until July 30, 2021 to provide participants with notice of material plan changes adopted in 2020. The DOL, however, is providing additional time to plan administrators delayed by the COVID-19 outbreak if they act in good faith and furnish the required notice as soon as administratively practicable under the circumstances.

Despite the ERISA notice deadline and the DOL’s permissible good faith extension, we note that a delay in notifying ERISA plan participants of the availability of temporary relief may frustrate the very purpose of making such relief available, and employers may want to consider producing and distributing an earlier updated SPD or SMM instead.

DOL Requires Claim Deadline Extensions

As detailed in our [May 6, 2020 Advisory](#), the DOL has issued guidance temporarily extending administrative deadlines for ERISA-covered retirement, health, and welfare plans based on the

duration of the federally declared national emergency for the COVID-19 outbreak. Such administrative deadline extensions include the timeframes provided to participants for submitting claims and appealing claim denials. Because these changes materially modify an ERISA-covered plan's claim procedures, plan sponsors are required under ERISA to furnish participants with timely notice of the temporarily extended claim deadlines.

IRS Permits Extended FSA Claims Period

As detailed in our [May 20, 2020 Advisory](#), effective only for the 2020 calendar year, the IRS has given employers the discretion to permit certain unused flexible spending arrangement ("FSA") amounts from the 2019 plan year to be applied to claims incurred through December 31, 2020. If a plan sponsor allows for this extended claim period, it would materially modify participants' rights to benefits under the FSA, and since [health](#) FSAs constitute ERISA-covered plans, plan sponsors must furnish health FSA participants with timely notice of the extended claim period.

IRS Permits Mid-Year Election Changes

Also as detailed in our [May 20, 2020 Advisory](#), effective only for the 2020 calendar year, the IRS has given plan sponsors the discretion to allow certain otherwise prohibited mid-year election changes with respect to FSA and health plan participation on a prospective basis. If a plan sponsor allows for these mid-year election changes, the plan sponsor is required to furnish health FSA and health plan participants with timely notice of the temporarily permissible election changes.

CARES Act Permits Early Plan Withdrawals and Plan Loan Relief

As detailed in our [April 3, 2020 Advisory](#), Congress has allowed plan sponsors to provide qualified retirement plan participants impacted by the COVID-19 outbreak with easier access to their account balances through increased plan loan limits and penalty-free early withdrawals. In addition, plan sponsors may delay certain qualified retirement plan loan payments for up to one year. Plan sponsors that make this relief available under an ERISA-covered qualified retirement plan are required to timely notify participants regarding their modified rights and obligations with respect to plan withdrawals and loans.

If you have any questions regarding ERISA notice and disclosure requirements, or any of the above-mentioned temporary relief from legal requirements, please contact a member of our [Employee Benefits Group](#).