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Update on Covid-19 Benefit Plan Deadline Extensions

Last year, shortly after the COVID-19 pandemic began, the DOL and IRS released guidance providing participants relief from certain COBRA and employee benefit plan deadlines, retroactive to March 1, 2020 (the beginning of the presidential COVID-19 national emergency declaration). In general, the relief extended time for the following deadlines:

- COBRA election
- COBRA premium payment
- HIPAA special enrollment
- Benefit plan claim or appeal or request for external review
- COBRA election notice

The guidance provided that the above deadlines would be tolled for the period of the presidential COVID-19 emergency declaration, plus 60 days (the "Outbreak Period"). At the time the relief was granted, most expected that the COVID-19 emergency period would end by mid to late 2020. Unfortunately, the COVID-19 emergency period continues. Under ERISA and the IRS Tax Code, the DOL and IRS only have authority to extend such deadlines for a one-year period (the "Tolling Period"). Therefore, it was expected that the Tolling Period would end on February 28, 2021, and the various time periods that had been tolled would begin to run on March 1, 2021.

However, on Feb. 26th, (the last business day before the expected expiration), the DOL announced that the one-year Tolling Period will apply on an individual by individual rolling basis. That means that the Tolling Period for employees who were terminated prior to March 1, 2020 (but were still in the applicable election period at that point) ended February 28, 2021, and any remaining time in their election period began running March 1, 2021. The Tolling Period for employees whose benefit plan deadlines began running after March 1, 2021 will continue to extend for up to one year from the date the applicable time period began running, or 60 days after the end of the presidential COVID-19 national emergency declaration, whichever occurs first. Specific examples are provided below:

- Due to termination, Employee A lost health coverage as of September 30, 2020, and her COBRA election period began on October 1, 2020. Employee A's Tolling Period extends until September 30, 2021 or 60 days after the presidential COVID-19 emergency declaration ends, whichever occurs first. Employee A will then have 60 days to elect COBRA.
- Employee B had a baby on October 5, 2020, and her HIPAA special enrollment period arising from the birth arose that day. Employee B's Tolling Period extends until October 5, 2021 or 60 days after the end of the presidential COVID-19 emergency declaration, whichever occurs first. The applicable HIPAA special enrollment period will then begin to run.

It is easy to see the complications created by these long-extended benefit plan deadlines. The guidance also suggests plan sponsors may want to provide some type of notice to plan participants when an individual's Tolling Period ends. Plan sponsors should discuss this latest announcement with their COBRA administrator and legal counsel.

Please visit www.moreton.com/news-events/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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