
# “COVIDIA”
# Benefits In the Time of COVID-19

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# Our Speakers

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# Our Speakers Expertise

- **Katherine Hesse** is a partner in the law firm of Murphy, Hesse, Toomey & Lehane, LLP in Quincy, Massachusetts, where she advises and represents companies, government and nonprofits on labor, employment and ERISA/employee benefits legal issues. She handles health and pension, single and multiemployer, corporate, Taft-Hartley, governmental and church plans. Ms. Hesse sits on the Benefits Quarterly Editorial Advisory Board and heads up its legal update team.

- **Mary Komornicka** is an attorney at Larkin Hoffman Law Firm in Minneapolis, Minnesota. She handles a wide range of ERISA issues, including plan design and correction of plan errors. She taught at Hamline University School of Law. She previously served as senior vice president of Marshall & Ilsley Trust Company where she led the personal trust, employee benefit trust and investment departments for the Minnesota office.

- **Anjali Radia** is an attorney at OneDigital in Atlanta, Georgia. She provides legal and compliance guidance related to all aspects of existing and proposed benefits-related laws and regulations to clients as well as her peers. She previously served as in-house counsel at a global talent-management company.

# "COVIDIA" – Benefits in Time of COVID-19


**Katherine Hesse, CEBS**
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# Overview

- **Part 1–Important U.S. Supreme Court Cases and the Coming Term**
- Part 2–Other Selected "Covidia" Cases
- Part 3–Ten Tips to Avoiding Litigation

# Part 1–U.S. Supreme Court Cases

- Discrimination against gay or transgendered individuals
  - Bostock v. Clayton County (6/15/2020)
- Is actual or constructive knowledge required to trigger ERISA statute of limitations?
  - Intel Corporation Investment Policy Committee v Sulyma (2/26/2020)

# Part 1–U.S. Supreme Court Cases - cont'd.

- Can individuals receiving fixed monthly payments under DB retirement plans sue for breach of fiduciary duty to recover losses as a result of mismanagement by the plan's fiduciaries?
  - Thole v U.S. Bank N.A**. (6/1/2020)**
- Will the Trump administration rules on scope of religious exemption to ACA contraception provisions be upheld?
  - Little Sisters of the Poor (7/8/2020)
- And in the current term: Rutledge and US. V. Texas

# Bostock v. Clayton County Georgia

- On June 15, 2020, the U.S. Supreme Court issued a landmark decision on the scope of Title VII of the Civil Rights Act of 1964.
- Issue: Whether Title VII of the 1964 Civil Right Act's prohibition
  of employment discrimination because of sex prohibits employment discrimination because of an employee's transgender identity or sexual orientation.

# Bostock v. Clayton County Georgia- cont'd.

- Decision: The court ruled in a 6-3 decision that Title VII's protections against discrimination because of sex extend to discrimination on account of gender identity and sexual orientation.
- The basis for the decision was that actions based on gender identity or sexuality are necessarily based on sex.
- Thus transgender and gay employees may not be terminated because simply because of identifying as transsexual or gay.

# Bostock v. Clayton County Georgia - cont'd.

- Holding:
  - An employer violates Title VII when it intentionally fires an individual employee based in part on sex.
    - It makes no difference if other factors besides the plaintiff's sex contributed to the decision or that the employer treated women as a group the same when compared to men as a group.
  - The Court held that the law is violated if an employer intentionally relies in part on an individual employee's sex when deciding to discharge the employee.

# Bostock v. Clayton Cty – Important Note

- On June 12, 2020, three days before the *Bostock* decision, HHS finalized rule changes regarding Section 1557 ("Final Rules"), effectively reversing the prior protections for transgender individuals.
- These Final Rules are fundamentally at odds with *Bostock* as to protections afforded to transgender individuals arising from prohibitions on "discrimination because of sex."
- *N.B.*, the Final Rules and the Court's decision in *Bostock* each interpret different statutes

# Bostock v. Clayton County- cont'd.

- While *Bostock* and the Final Rules do agree on the definition of "sex"—"sex" means the sex an individual was assigned at birth-- they depart at the meaning of "discrimination because of sex."
- HHS interprets "sex" to be legally and conceptually distinct from self-identified gender. As noted above, *Bostock* holds the two to be "inextricably" bound together.
- In light of this different reading, courts will likely be asked to enjoin implementation of the Final Rules.

# Bostock v. Clayton County- cont'd.

- Takeaways:
  - Review coverage and eligibility rules in light of Bostock and the Final Rules.
  - Consider coverage for gender—reassignment/affirmation surgery, gender dysphoria, prescription drug and mental health benefits and whether plan changes may be necessary or appropriate
  - Review coverage of same-sex spouses and same-sex domestic partners as to whether changes in your plan many be necessary or appropriate
  - Request clarification from insurance companies and plan administrators as to what changes they have made if any and how they are complying.

# Bostock v. Clayton County-cont'd.

- Takeaways: *(continued)*
  - Ask about network access to providers who can provide appropriate services
  - An unanswered question is the extent to which a religious organization or an organization whose owner has "sincerely held religious beliefs" may claim an exemption to Title VII mandates or a reasonable accommodation.
  - Disability plans should also consider how this might affect related leaves, such as for gender surgery

# Intel Corporation Investment Policy Committee v. Sulyma

- On February 26, 2020, the Supreme Court resolved a Circuit split regarding whether actual knowledge or constructive knowledge is required to trigger the ERISA statute of limitations.
- The Court upheld the Ninth Circuit decision and found that actual knowledge, consistent with the plain language of 29 U.S.C. § 1113(2), is required in order to trigger the statute of limitations, upholding the Ninth Circuit decision.

# Intel Corporation Investment Policy Committee v. Sulyma – cont'd.- Facts

- Sulyma filed a class action alleging overinvestment in alternative assets, which carried higher fees and, when the stock market rebounded, Sulyma's funds lagged behind others such as index funds.
- Intel  moved to dismiss the complaint on the basis that the statute of limitations had expired.
- Although Sulyma filed it within six years of the alleged breaches, he filed it more than three years after the investment decisions had been disclosed to him.

# Intel Corporation Investment Policy Committee v. Sulyma - cont'd.

- Supreme Court Decision: On February 26, 2020, the Supreme Court issued a rare **unanimous** opinion, delivered by Justice Alito. Justice Alito began his opinion by stating simply that the Court granted *certiorari* "to resolve whether the phrase 'actual knowledge' does in fact mean 'what it says,' . . . and hold that it does."
- In the absence of actual knowledge, ERISA also provides a "statute of repose," consisting of six years from the date of the action, which applies whenever a plaintiff does not have actual knowledge of the alleged impropriety.

# Intel Corporation Investment Policy Committee v. Sulyma - cont'd.

- The Court pointed out, that there are many "usual ways" to prove actual knowledge, including by "inference from circumstantial evidence."
- Therefore, the Court explained, the parties are not obligated to take a plaintiff's statement that he or she does not recall reading disclosures as the truth when there is evidence to counteract the statement.
- The fundamental inquiry remains whether or not the plaintiff actually did become aware of the alleged fiduciary impropriety at any point in time.

# Intel Corporation Investment Policy Committee v. Sulyma - cont'd.

- Takeaways:
  - From a plan sponsor point of view, the shorter statute of limitations is desirable.
  - To be able to take advantage of the shorter statute, the fundamental inquiry remains whether or not the plaintiff actually did become aware of the alleged fiduciary impropriety.
  - Thus the main takeaway is to pay attention to the content and method of delivery of investment information to participants.
  - Think about a documentation system that will document not only delivery but of reading the communications.

# Thole v. U.S. Bank N.A.

- On June 1, 2020, the U.S. Supreme Court decided that individuals receiving fixed monthly payments under a defined benefit retirement plan were not able to sue for breach of fiduciary duty to recover losses sustained as a result of alleged mismanagement by the plan's fiduciaries.

# Thole v. U.S. Bank N.A.- cont'd.

- The plaintiffs lacked standing under Article III of the United States Constitution.
  - To establish standing under Article III of the Constitution, Plaintiffs must show a concrete injury caused by the administrator resulting in damage that would likely be redressed through judicial action.
  - Plaintiffs failed to show that they suffered such concrete injury

# Thole v. U.S. Bank N.A.- cont'd - Takeaways

- DB plan participants who receive fixed payments cannot sue for fiduciary breach simply by alleging that the plan suffered a concrete injury in losses as a result of poor investment.
- There is however an open standing question on behavior that jeopardizes the existence of the plan or its ability to make good on its benefit promises
- Despite the ruling, which is good news as it means less litigation, this case does not take away from the importance of best practices and following the D's!

# Little Sisters of the Poor

- On July 8, 2020, the U.S. Supreme Court decided the challenge that had been brought by the Little Sisters of the Poor
- The ACA requires covered employers to provide women with "preventive care and screenings" without "any cost sharing requirements."

# Little Sisters of the Poor- cont'd.

- The HRSA Preventive Care Guidelines mandate that health plans provide coverage for all FDA approved contraceptive methods.
- The Departments (HHS, Labor, and Treasur) gave HRSA the discretion to exempt religious employers, such as churches, from providing contraceptive coverage, and they later issued a rule accommodating qualifying religious organizations by allowing them to opt out of coverage.

# Little Sisters of the Poor - cont'd.

- Religious entities challenged the rules under the Religious Freedom Restoration Act of 1993 (RFRA).
- The District Court issued a preliminary nationwide injunction against the implementation of the final rules, and the Third Circuit affirmed.

# Little Sisters of the Poor- cont'd.

- The Supreme Court found that the Department had the authority under the ACA to promulgate the religious and moral exemptions.
  - Concerns that the exemptions thwart Congress' intent by making it significantly harder for interested women to obtain seamless access to contraception without cost-sharing cannot justify supplanting the text's plain meaning.
  - Even if such concerns are legitimate, they are more properly directed at the regulatory mechanism that Congress put in place.
  - The rules promulgating the exemptions are free from procedural defects

# Little Sisters of the Poor- cont'd.

- The Court upheld the religious and moral exemptions as the Departments had legal authority to promulgate the rules and properly followed the legal procedure for doing so.
- The Court remanded the case to the lower courts to address remaining issues, including whether the exemptions were arbitrary and capricious

# Little Sisters of the Poor - Takeaways

- The Supreme Court's decision allows certain employers the right to remove contraceptive coverage from their health plans on the basis of sincerely-held religious or moral objections.
- However, the final status of the rules remains in question until a determination as to whether such rules were the result of a reasoned decision or are arbitrary and capricious.

# Little Sisters of the Poor - Takeaways

- The exemptions may also face additional revision under a new Presidential administration.
- As a result, the long-running saga regarding the ACA and its contraceptive mandate continues.
- Concurring opinions make it clear the case is not yet closed—there is likely to be further litigation.
- Changes in Supreme Court composition may play a major role.

# Rutledge v. Pharmaceutical Care Management Assn

- U.S. Supreme Court opened its new term October 5.
- On Tuesday, October 6, the case heard its only ERISA case for the term aside from the ACA.
- Rutledge presents the question of whether an Arkansas law regulating pharmacy benefit managers drug reimbursement rates is preempted by ERISA.

# Rutledge v. Pharmaceutical Care Management Assn. - cont'd.

- At least thirty-six states have passed legislation to curb certain prescription drug reimbursement practices by PBMs.
- In response to these laws, PCMA filed a series of suits across the country arguing that regulation of PBMs and state-drug reimbursement regulations are preempted.
- The Arkansas law being challenged (Act 900) seeks to regulate PBMs by requiring that pharmacies be reimbursed for generic drugs at a price equal to or higher than the cost charged by the wholesaler.

# Rutledge v. Pharmaceutical Care Management Assn. - cont'd.

- The District Court for the Eastern District of Arkansas found that the state statute was not preempted by Medicare Part D, but that it was preempted by ERISA.
- Both Rutledge and PCMA appealed the decision to the Eighth Circuit Court of Appeals.
- The Eighth Circuit held that ERISA's broad preemption of "any and all State laws" "that relate to" an employee benefit plan meant Act 900 was preempted by ERISA.

# Rutledge v. Pharmaceutical Care Management Assn.- cont'd.

- At oral argument before the Supreme Court, Arkansas argued that Act 900 was not preempted by ERISA for three reasons.
- First, it argued that the law constitutes rate regulation of drugs a healthcare plan has already decided to cover, not a regulation of benefits.

# Rutledge v. Pharmaceutical Care Management Assn. cont'd.

- Second, Arkansas argued that the Act regulates PBM reimbursement practices, an area unregulated by ERISA and outside of the realm of health plan administration or control.
- Lastly, Arkansas argued that the law does not refer to ERISA and applies to PBMs serving both ERISA and non-ERISA entities.

# Rutledge v. Pharmaceutical Care Management Assn. -cont'd.

- The United States supported Arkansas arguing that the key question in this case is whether the Arkansas law directly regulates a central matter of plan administration.
  - If it does, then the law has an impermissible connection with ERISA plans.
  - If it does not, then there is no impermissible connection and no ERISA preemption.

# Rutledge v. Pharmaceutical Care Management Assn. - cont'd.

- In contrast, PCMA argued the law directly regulates plan administration and therefore must be preempted by ERISA.
- If the court were to find no ERISA preemption, PBM's would be subject to varying state regulations, which would make uniform national administration impossible.

# Rutledge v. Pharmaceutical Care Management Assn. – Takeaways

- The oral argument failed to give much indication regarding how the Supreme Court Justices will rule.
- The Court's decision has the potential to significantly limit or expand the extent to which state laws in the healthcare space are preempted.

# California v. Texas; Texas v. California

- On November 10, 2020, the Supreme Court heard oral arguments in the case between California and Texas regarding the future of the Affordable Care Act ("ACA").
- The case centers around the impact on the ACA of the 2017 Tax Cuts and Jobs Act ("TCJA") which reduced the tax on individuals for not maintaining health insurance to $0.

# California v. Texas; Texas v. California- cont'd.

- Texas argued in the Northern District of Texas that the changes made pursuant to the TCJA rendered the individual mandate unconstitutional.
- More controversially, Texas also argued that if the individual mandate was unconstitutional, the entire ACA must fall because the individual mandate was so integral to the entirety of the statute.
- The District Court agreed, and the case was appealed to the Fifth Circuit. The Fifth Circuit also found that the individual mandate was unconstitutional, but did not rule on the question of whether the mandate could be severed from the remainder of the ACA or if the entire ACA must fail.

# California v. Texas; Texas v. California- cont'd.

- The Supreme Court arguments focused on three main issues.
  - First, the Justices discussed whether or not the plaintiffs had standing.
  - Second, the Justices questioned whether the TCJA rendered the individual mandate unconstitutional.
  - Lastly, the Justices considered whether the individual mandate could be severed from the remaining provisions of the ACA or if the individual mandate is so integral to the ACA that severance of the provision is not possible.

# California v. Texas; Texas v. California- Takeaways

- There is no doubt that the Supreme Court's decision in this case could have an enormous impact on the entire healthcare market if the ACA were to be found unconstitutional in its entirety.
- The Justices appeared inclined to determine that the individual mandate is severable from the remaining provisions of the ACA, a determination which would largely preserve the *status quo*.
- The Justices' positions regarding the initial questions addressing the plaintiffs' standing to bring their claims and the constitutionality of the mandate following the TCJA amendment are more difficult to determine.
- A decision is expected in the first half of 2021.

# Status of ACA

- Takeaways:
  - Stay tuned. Things change. Daily sometimes.
  - The Supreme Court may ultimately determine whether or not the ACA remains good law.
  - The composition of the Supreme Court may well have an effect on how the Court comes down.
  - The election may have a major effect on what happens.

# Overview

- Part 1–Important U.S. Supreme Court Cases and the Coming Term
- **Part 2–Other Selected "COVIDIA" Cases**
- Part 3–Ten Tips to Avoiding Litigation and Other Recent Cases and Trends

# Part 2–Other Selected "COVIDIA" Cases

- Endries and Nichols v. Board of Directors of the Motion Picture Industry Health Plan et al., complaint filed 7/16/2020, W.D.Cal.
- Board of Trustees of the IBEW, Local 38 Pension Fund, complaint filed 11/30/2020, S.D.N.Y.

# Endries v. MPIHP

Complaint filed by two members of the International Cinematographers Guild, one of the participating unions in the PMIHP, an ERISA covered health plan, alleging

- that they joined the local union based on its touted "best medical coverage in the entertainment industry";

# Part 2–Endries v. MPIHP, cont'd.

- that they were on track to make the qualifying number of hours when COVID-19 shut down the motion picture industry in NY and LA where they live and work, respectively;
- that the Plan fiduciaries responded to the problem by extending 300 hours of credit, and later extending waiver of premiums for dependents as well as COBRA subsidies, to participants receiving benefits under the plan and who needed to earn 400 hours by April or thereafter;
- that the plan refused to extend the hours, premium waiver for dependents, or COBRA subsidies to them and others like them, thus leaving them "out in the cold";

# Part 2–Endries v. MPIHP, cont'd.

- that this forced them to pay for COBRA or other coverage they could not afford given their loss of employment or go without coverage during "this dangerous health crisis"; and
- that this amounts to a violation of the duty of loyalty by plan fiduciaries which requires the plan to treat all plan participants fairly and not to arbitrarily favor one group of participants over another.

# Part 2–Bd of Tees v. Allianz

- Pension funds sued asset manager, Allianz, for failing to safeguard investments during the coronavirus market meltdown.
- The suits allege that Allianz  and its asset management arm, Allianz Global Investors, in its Structured Alpha family of funds, strayed from a strategy of using options to protect against a short-term market crash.
- The matter is also being investigated by the SEC.

# Part 2–Bd of Tees v. Allianz, cont'd.

- A complaint filed last month by an IBEW Pension Fund Board of Trustees is reportedly similar to those filed by other union funds including the Metropolitan Transportation Authority of New York, Teamster funds, Arkansas teachers, and BCBS
- The IBEW case alleges that the "hard-earned funds" of Cleveland-area electricians and teledata technicians were "decimated by the negligent and imprudent mismanagement of an investment manager that failed to act as a reasonably prudent manager would act in the face of an historic market dislocation", and failed to follow the "all-weather" hedging and risk management strategies that it "repeatedly touted" as capable of "perform[ing] whether equity markets are up or down, smooth or volatile."

# Part 2–Bd of Tees v. Allianz, cont'd.

- They alleged that AllianzGI's "negligent and imprudent bet" proved to be disastrous in that by the end of April 2020, when Plaintiff was permitted to withdraw, it had lost over 42% of its investment since the beginning of the year.
- That AllianzGI failed to provide adequate stress testing, failed to competently implement its restructuring strategy, failed to utilize the resources of its global financial network in ways it had promised to assist in risk management.
- That these and other acts constituted negligence, breach of contract, and breach its fiduciary duties as the pension fund, which had relied, to its detriment, on the representations of AllianzGI of how it would manage and hedge against risk during times of market volatility.

# "COVIDIA" Cases

- **Takeaways:**
  - Stay tuned. Things change. Daily sometimes.
  - These cases are just getting into the pipeline now.
  - It's all about process and due diligence and documentation of same.

# Overview

- Part 1–Important U.S. Supreme Court Cases and the Coming Term
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# Part 3- The Guiding Principles: The Ds

- Ds to Remember:
  - **Dignity** (DEI)
  - **Discretion** (pending cases)
  - **Diversity** (Bostock; DEI)
  - **Disclosure** (Intel)
  - **Due Diligence** (Thole; pending cases)
  - **Due Process** (Little Sisters; pending cases)
  - **Documentation** (Intel)
- Ds to Avoid:
  - **Delay** (Intel)
  - **Discrimination** (Bostock; Little Sisters; DEI)
  - **Deceit (pending cases)**

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# Retirement Plans Recent Developments

# Topics

- Setting Every Community Up for Retirement Enhancement (SECURE) Act -- 12/20/19
- Coronavirus Air, Relief, and Economic Security (CARES) Act – 3/27/20
- DOL Notice 2020-50 re: ESG Investments

# Long-Term Part-Time Employees (LTPT)

- Who –
  - Age 21
  - 3 consecutive 12-month  periods with 500 or more hours
  - Start counting 1/1/21
- What – Entitled to defer into a 401(k) plan
- When – Earlier of
  - 1st day of plan year or
  - 6 months after satisfying the requirements
- Employer Contributions
  - Not required
  - Vesting – 1 year for each 12-month period (including service prior to 1/1/21)

# LTPT – Issues

- Relief from nondiscrimination and top-heavy testing
  - Included in SECURE Act, but no details
  - Need IRS guidance
- Administrative challenge of 12-month consecutive periods
  - Most plans move to Plan Year tracking after 1st 12-month
  - Elapsed time plans

# Qualified Birth or Adoption Distributions (QBAD)

- Up to $5,000 in-service distribution for birth or adoption of child
  - During 12-month period following birth/adoption
- Each parent can take the QBAD
- Taxable but not subject to 10% early distribution penalty
- Discretionary plan provision
  - 401(k), 403(b), Gov't 457, and IRAs
  - As early as Plan Years beginning 1/1/20
- If plan permits QBAD, it must also permit recontributions

# 401(k) Features

- Safe-Harbor
  - Can adopt non-elective safe harbor up to 30 days before end of plan year
  - Can adopt non-elective safe harbor up to end of following plan year if making a 4% safe harbor contribution

- QACA (Qualified Automatic Contribution Account)
  - Previously limited to 10% maximum deferral rate
  - Now can go up to 15%

# CARES Act

- Passed in March
- Focused on 2020

- Eligible individual
  - Tested positive for virus
  - Spouse or dependent tested positive
  - Financially affected by virus
  - Can rely on participant self-certification

# Covid-19 Related Distributions (CRD)

- Maximum $100,000
- Not subject to mandatory 20% withholding
- Cannot be rolled over into IRA
- Three-year tax feature (optional)
- May be repaid to plan or to another plan/IRA
  - Within 3 years

# Covid-19 Related Loans (CRL)

- Increased amount
  - Maximum to $100,000
  - Up to 100% of vested benefit
  - But only for 180-days (ended on 9/22/20)
- Existing loans (3/27/20)
  - Delay payments for one year
  - Re-amortize with extension of payment
- Safe harbor –
  - Suspend payments until 12/31/20
  - Start up payments 1/1/21
  - Re-amortize to include interest due with a one-year extension of loan term
  - New payment amount effective 4/1/21

# Required Minimum Distribution

SECURE Act

- RMD pushed back to age 72
- Elimination of "stretch IRA"
- New beneficiary rule
  - Life expectancy rate for spouse, disabled child
  - Life expectancy rate for minor child until age 18, then over 10 years
  - 10 year payout for all others

CARES Act

- Waived for 2020
- If individual received RMD in early 2020, can repay that amount
- Extends non-spouse beneficiaries' distributions for one year

# Plan Amendments

- Delayed amendment date
  - Last day of plan year beginning on or after January 1, 2022
- Amendment retroactive to effective date of provision stated in SECURE Act for required amendments
- Amendment retroactive to effective date of provision for discretionary amendments, as selected by plan sponsor
- Plan must operate as if the amendment was in effect
- Cycle 3 prototype restatements – July 31, 2022

# DOL Final Rule Re: ESG Investments

- ESG – Environmental, Social and Corporate Governance

*"Providing secure retirement for American workers is the paramount, and eminently worthy, "social" goal of ERISA plans; plan assets may never be enlisted in pursuit of other social or environmental objectives at the expense of ERISA's fundamental purpose of providing secure and valuable retirement benefits."*

--DOL Notice 2020-50

# ESG Investments

- Fiduciary duty prevents investment alternative that is financially less beneficial than reasonably available alternatives

- Cannot sacrifice investment returns or take on greater risk to promote non-pecuniary benefits or goals

# 5 amendments to Fiduciary Investment Duties

1. Must evaluate investments based solely on pecuniary factors
2. Prohibited from subordinating interests of participants to unrelated objectives
3. Must consider reasonably available alternatives
4. Must follow stated investment analysis and documentation requirements when non-pecuniary factors are used in choosing between investments that cannot be distinguished on basis of pecuniary factors alone
5. Prudence and loyalty standards in ERISA apply to designated investment alternatives in 401(k) plan – cannot be ESG funds

Compliance Buzz

# Frozen in Time: Key Employee Benefit Timeframes & COVID-19

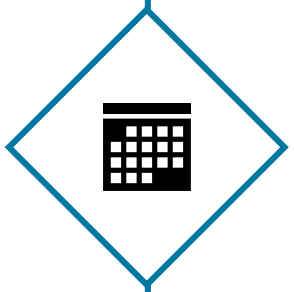
**Anjali Radia | Employee Benefits Attorney**

**December 8, 2020**

*"Recognizing the numerous challenges participants and beneficiaries already face as a result of the National Emergency, it is important that [the Agencies] take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established timeframes. Similarly, the Agencies recognize that affected group health plans may have difficulty complying with certain notice obligations."*

- Joint Rule by DOL and IRS (85 FR 26351)

# Agenda



**Extension** of key employee benefit timeframes

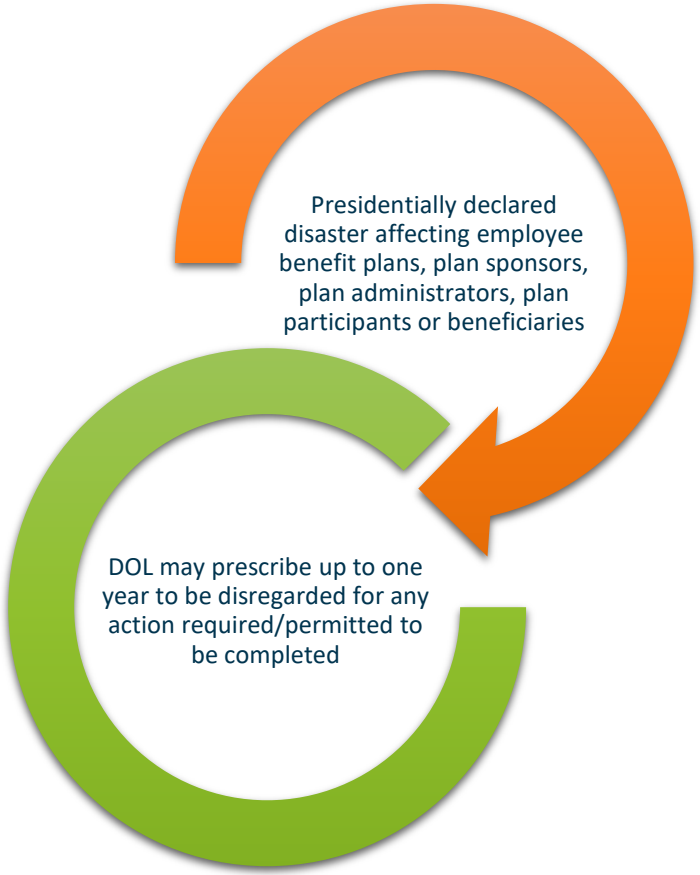
**Background** of affected employee benefits

**Issues** and considerations with administering the temporary relief

# Extension of Key Benefit Timeframes

## Outbreak Period


## Limit of Outbreak Period Under ERISA



# HIPAA Special Enrollment

**30 days**

- Loss of eligibility for coverage
- Becomes dependent by birth, marriage, adoption, or placement for adoption

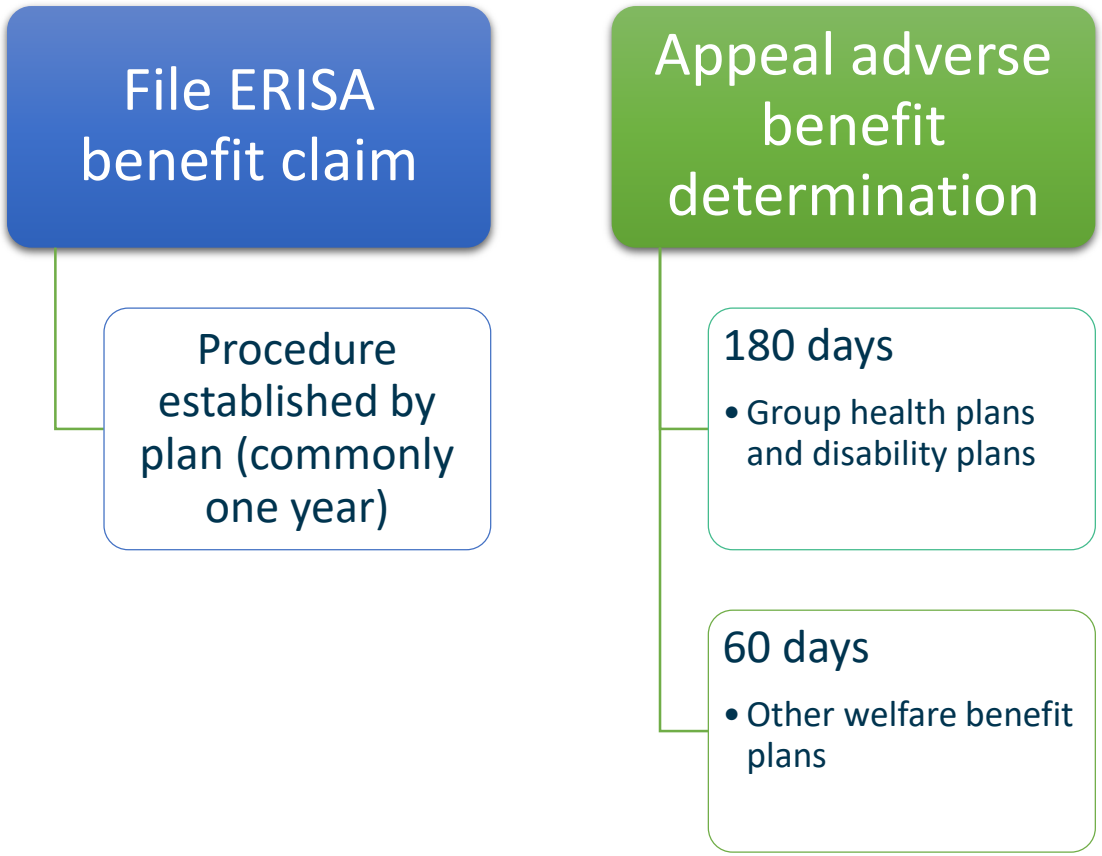
**60 days**

- Children's Health Insurance Program

**Issues and Considerations**

- Need to work with TPA and carrier to ensure implementation
- Requests possibly denied as untimely → review plan records
- Administration issue for special enrollment overlapping with outbreak period

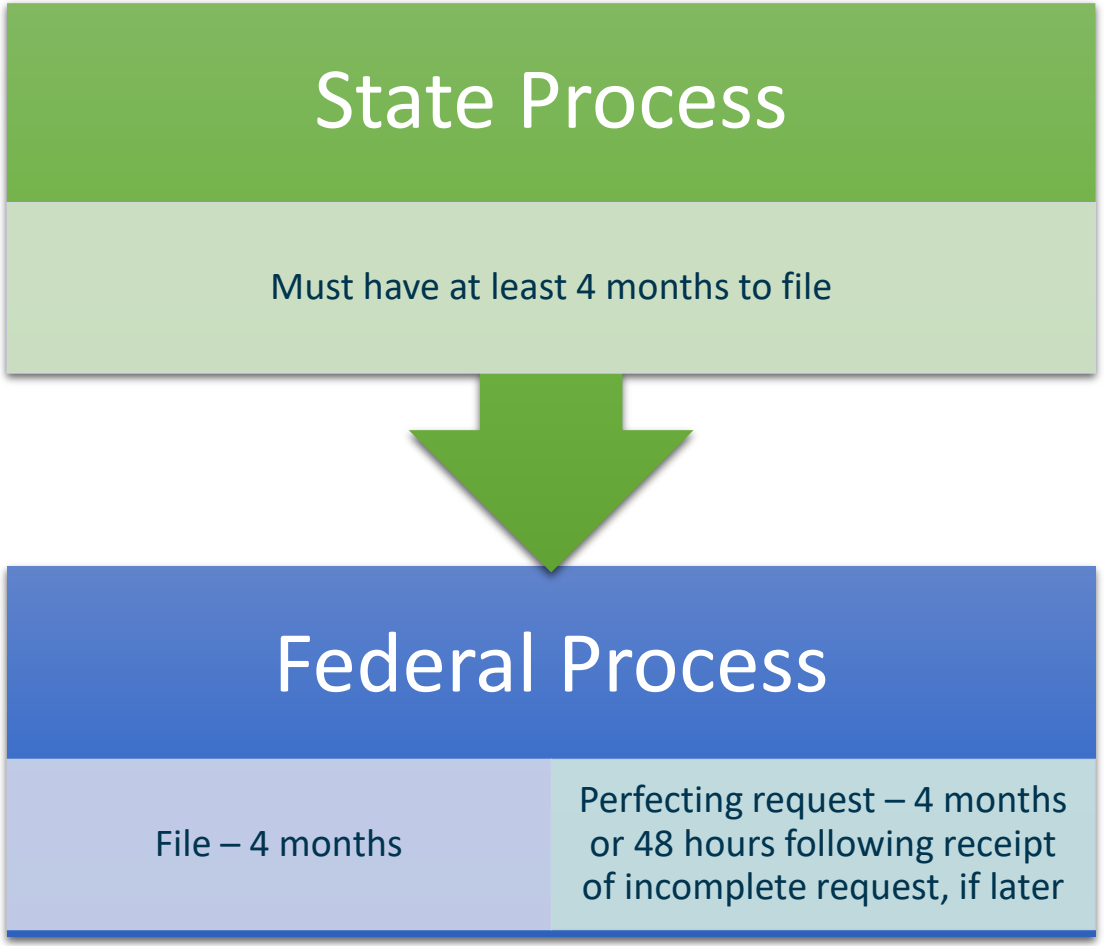
# Claims Procedures




**Issues and Considerations**

- Affects health FSA and HRA expense reimbursement requests
- Relief does not provide additional time to incur claims
- Deadlines to adjudicate claims and appeals not suspended

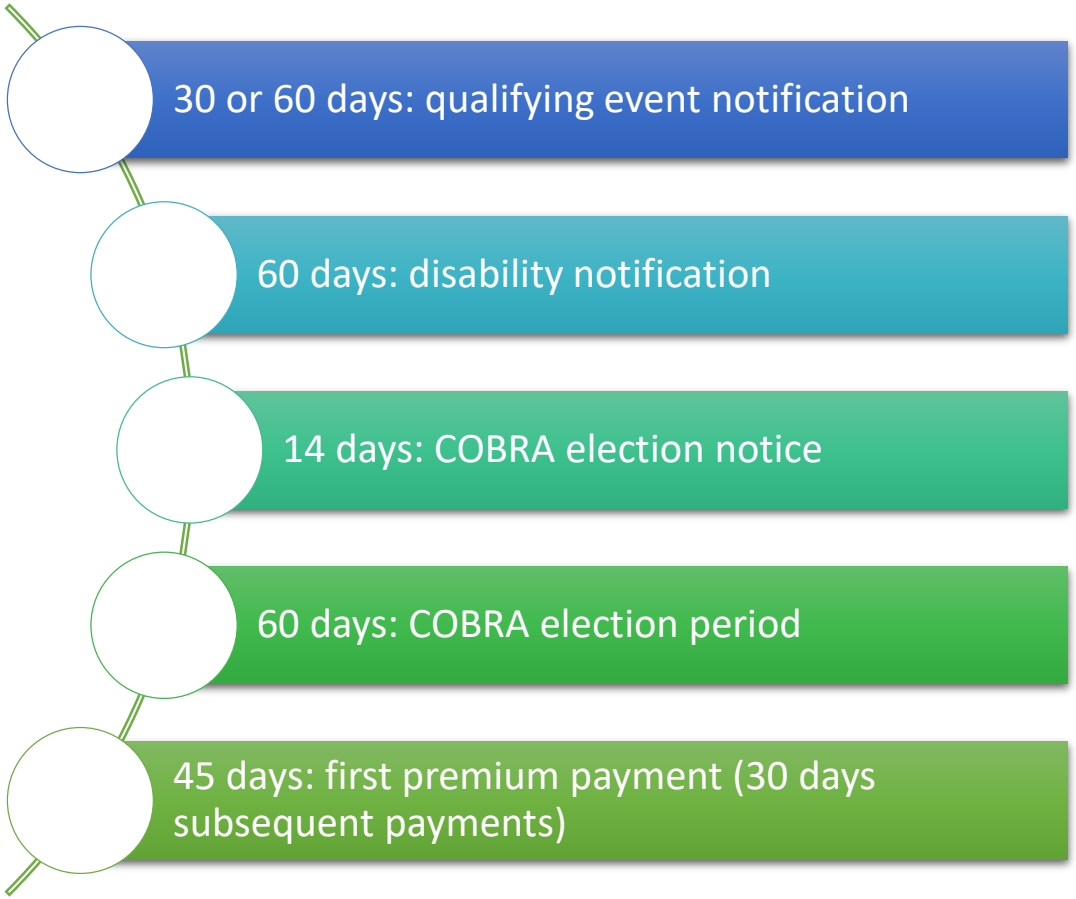
# External Review




**Issues and Considerations**

- May extend period in which participants may file lawsuits
- Plans should confirm independent review organizations' awareness of requirement and ability to comply

# COBRA



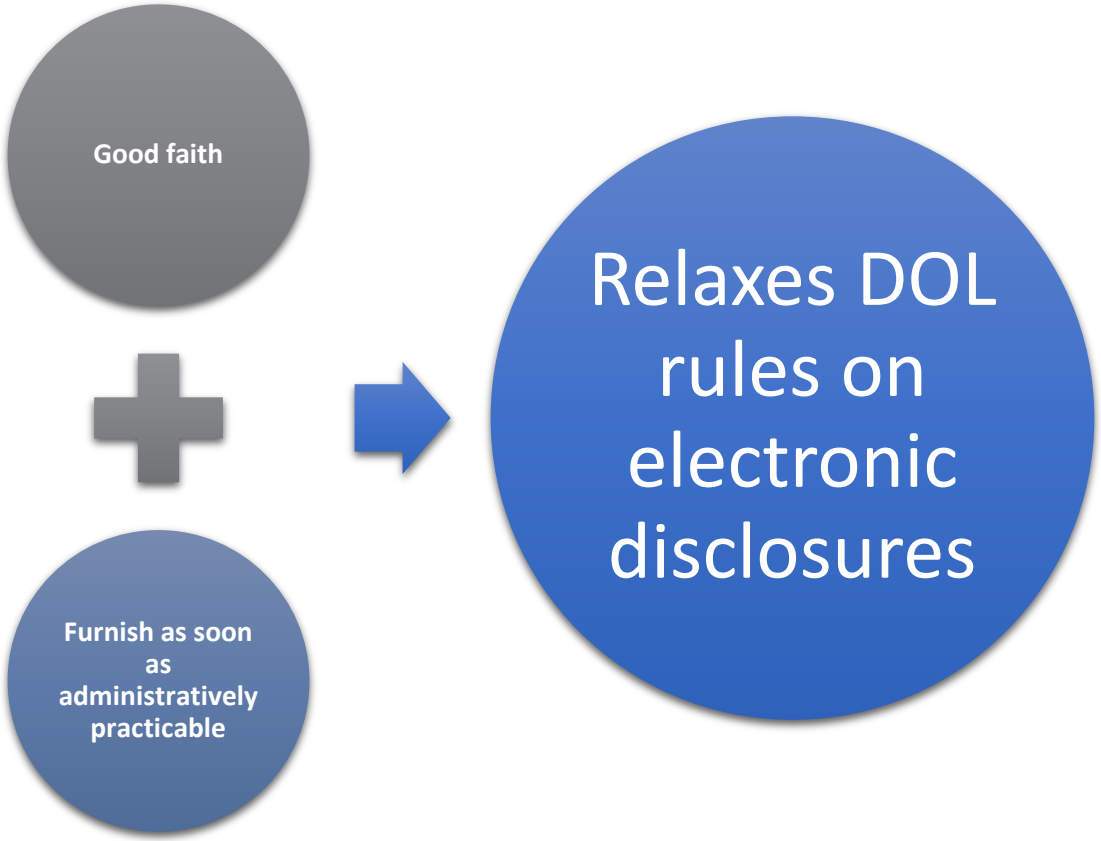

**Issues and Considerations**

- Increases risk for adverse selection
- Coverage upfront vs. retroactive
- Reconciling extension with prior communications
- Impact of other coverage
- Impact on insured vs. self-insured plans

# Notices under ERISA

| | |
|---|---|
| SMM | • 210 days after end of plan year where change adopted<br>• 60 days after material reduction |
| SPD | • 120 days after becoming subject to ERISA |
| SBC | • Open enrollment, renewal or reissuance of coverage<br>• 60 days prior to material modification |
| Adverse Benefit Determinations | • Timing varies based on type of claim |

**Temporary Relief**



# Employer Takeaways

- Aim to comply with any action, notice or disclosure when originally due or as soon as practicable
- Document good faith efforts to comply
- Coordinate with carriers and service providers on method of administration
- Decide how and when to communicate employee benefit extensions to employees
- DOL approach to enforcement will stress compliance assistance and other appropriate relief

## ONEDIGITAL

OneDigital is the nation’s leading strategic advisory firm focused on driving business growth for employers of all sizes. Combining people and technology, OneDigital offers employers a sophisticated combination of strategic benefit advisory services, analytics, compliance support, human resources management tools and comprehensive insurance offerings.


# Reminders

- Copy of webinar
  - Session has been recorded
  - Recording and slides will be on Chapter website within 24 hours
  - Email will be sent with the link to our website within 24 hours
- Continuing Education – 1 hour
  - If logged in via computer duration of the presentation
  - Will receive an email within 48 hours
  - CEBS requires self-reporting
  - SHRM and HRCI approved course # will be provided


# Registration is Open!

## Kick Start 2021:
## Employee Benefits Compliance Checklist

ISCEBS CWC Event

January 12th (Tuesday)

11:45AM – 1:00PM PACIFIC

**Register at:**

www.pnwiscebs.org under Webinar Coalition

Scroll down to see our upcoming events


# Reminder

- As you leave the webinar, please take our quick survey!