

CLIENT ALERT

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**IMPORTANT
DEADLINES COMING
TO AN END**

ON APRIL 28, 2020, THE DOL AND IRS MADE TEMPORARY ADJUSTMENTS TO THE VARIOUS TIMEFRAMES/DEADLINES INCLUDING THOSE FOR COBRA, HIPAA SPECIAL ENROLLMENTS AND CLAIM FILING AND APPEALS TO PROVIDE RELIEF FOR INDIVIDUALS EXPERIENCING SUCH EVENTS DURING THE NATIONAL EMERGENCY DUE TO COVID-19.

On March 13, 2020, President Trump declared a state of National Emergency retroactive to March 1, 2020. As part of the national emergency, the DOL and the IRS (collectively, the "Agencies") issued joint guidelines to disregard or toll the timeframe by which these events must be reported or filed until the end of the outbreak period which was defined as the end of the National Emergency plus 60 days. These guidelines were applied retroactively to the beginning of the outbreak period of March 1, 2020. When the guidelines were issued, it was believed that the national emergency would end in 2020 and the full outbreak period then would be less than one year.

In accordance with authority granted to the agencies, the outbreak period is a product of the ERISA Section 518 and IRC Code Section 7508A. ERISA Section 518 and Code Section 7508A give the Agencies authority during a declared disaster or a public health emergency, to prescribe a period that may be disregarded when determining the due date for taking certain actions, for a period up to one year. Unless additional guidance is provided, the government provided extensions for COBRA, Special Enrollment Rights and Claim Filing will end on February 28, 2021.

The time frames that were tolled are:

- 60-day COBRA election period
- 45-day COBRA initial premium payment deadline
- 30-day grace period for monthly COBRA premium payments

- 14-day period for plans to provide election notices to qualified beneficiaries (44 days if the employer is the plan administrator)
- the 30- or 60- day HIPAA special enrollment period; and
- the time periods for filing benefit claims and appeals.

The Agencies have not provided additional guidance as of this Client Alert. So, while February 28, 2021, is a hard stop date due to the one-year limit, since deadlines were only tolled, any remaining time a participant had when the deferral of the timeframes took place will still apply.

Section 202(D) of the National Emergencies Act provides for the automatic termination of a national emergency unless within 90 days prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, President Biden has sent to the Federal Register for publication a notice stating that the national emergency which began on March 1, 2020 is to continue in effect beyond March 1, 2021.

Given the extension of the national emergency, it is possible that a new one-year national emergency extension will be issued tolling timeframes through February 28, 2022 or the 60-day outbreak period will be extended beyond February 28 or some other reasonable outcome. As additional guidance is provided, we will keep you informed.

Sidenote - The additional COVID-19 legislation, should it pass as it is currently written, provides qualified individuals who are terminated involuntarily with an 85% COBRA subsidy through September 30, 2021. The employee will be responsible for 15% and the employer will cover the 85% subject to an employment tax credit. Be on the lookout for additional information should this legislation pass.

Disclaimer: This notification is provided as for informational purposes only and is not meant to advise you of your entire obligations under this rule, nor to serve as legal advice. If you would like more complete information, please do not hesitate to contact our office, your accountant, or your attorney.