

From: Michael Bartolic [mailto:mbartolic@robertsbartolic.com]
Sent: Tuesday, October 24, 2017 12:10 PM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB39

Dear DOL:

I believe there is ill cause to delay implementation of the new disability claim regulations. The DOL already addressed all the concerns raised in the purported need for delay when considering the rule. The insurance industry aggressively opposed the measure and provided its bases. After careful consideration of all positions, the rule making process closed.

DOL already evaluated the potential cost increases now being raised by plans and insurers and concluded the costs would be minimal. One element of cost that was not considered, though, for it cannot be accurately monetized, is the reduced spending in litigation as a result of measures. One of the new regulations would require that where claims administrators rely on new information following an appeal, they must disclose the new information to the claimant and provide the claimant an opportunity to comment upon it. In these cases, all too often claims administrators outright deny a claim, and assemble their bases to uphold the denial after the claimant's appeal, providing the claimant no opportunity to ever address the evidence, which can be a determinative issue in the appeal. A recent case I litigated to judgment involved just that fact scenario, and the judge remanded the case to permit the claimant to address the new expert report, as it was a determinative issue on appeal. See *Suson v. PNC Financial Services Group, Inc.* No. 15-10817, 2017 U.S. Dist. LEXIS 119473 (N.D. Ill. July 31, 2017). The parties spent combined over \$160,000 litigating a matter that had the new regulation been in place, likely would not have been spent, because the judge ultimately ruled the matter had to be remanded to allow the claimant to address the determinative issues raised in the new evidence, which she never had opportunity to address. ERISA's claims procedures regulations were designed to lead to efficient pre-litigation claims settlement and prevent unnecessary cases from being litigated. The additional measures in the new regulation will 100%, without a doubt, reduce legal fees spent on litigation, and reduce courts' congestion with these types of cases. There are far more regulations regarding pension plans than there are regarding disability benefit plans. Not surprisingly, there are far fewer disputes governing pension benefits than there are regarding disability insurance benefits. The regulations provide certainty in how administrators should handle claims, and what claimants should expect in making a claim, thus reducing the number of sources of disagreement.

After listening to all parties concerns, the DOL already propounded well thought out regulations and provided sufficient time before implementation for all parties to prepare to follow them.

There should be no further delay in implementing the regulations.

Sincerely,

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