

# EMPLOYEE BENEFITS LAW

## INFORMATION MEMO

MAY 31, 2023

### **The Impact of the (Official) End of the COVID-19 National Emergency and Other Employer-Sponsored Employee Benefit Plans Developments of Which Employers Should be Aware**

As we have discussed in prior client alerts “[U.S. Department of Labor Issues Guidance on Employee Benefits and COVID-19 Outbreak](#)” and “[How the Anticipated End of the COVID-19 National Emergency Impacts Employer-Sponsored Health Plan Deadlines](#),” several deadlines related to employer-sponsored employee benefit plans were extended as a result of the declared national emergency due to the COVID-19 pandemic (National Emergency). The period during which such deadlines were extended was referred to by the Department of Labor, along with the Department of Health and Human Services and the Department of the Treasury (the “agencies”), as the “Outbreak Period.” The guidance issued by the Agencies provided that the Outbreak Period would end 60 days after the end of the National Emergency, which President Biden announced on Jan. 30, 2023 would be **May 11, 2023**.

On March 29, 2023, the Agencies [issued guidance in the form of Frequently Asked Questions \(FAQs\)](#) addressing the anticipated end of the National Emergency and associated Outbreak Period, as well as providing guidance with respect to other developments impacting employer-sponsored employee benefit plans. The FAQs reflected that the Agencies anticipated that the Outbreak Period would end on **July 10, 2023** (60 days after the anticipated end of the COVID-19 National Emergency of May 11, 2023).

However, on April 10, 2023, H.J. Res. 7 was signed into law and ended the National Emergency effective immediately, not on May 11, 2023. The abrupt ending of the National Emergency sooner than anticipated created confusion regarding whether the Outbreak Period would end 60 days following April 10, 2023, or 60 days following May 11, 2023 as anticipated by the Agencies in the FAQs. Subsequently, the Agencies have informally stated that the Outbreak Period will end on **July 10**.

#### **I. Impact of End of Outbreak Period on Employee Benefit Plan Deadlines**

As previously described, a joint notice issued by the Agencies on April 28, 2020, required that the period from March 1, 2020 until 60 days after the announced end of the National Emergency (the Outbreak Period) be disregarded for the following employee benefit plan deadlines:

- the deadline (generally, 30 days) to request special enrollment under a group health plan;
- the deadline for a health plan participant or qualified beneficiary to notify the plan administrator of the occurrence of certain COBRA qualifying events;
- the 60-day election period for COBRA continuation coverage;
- the due date for making COBRA premium payments;
- the deadline by which an individual may file a claim for benefits under a plan’s claims procedure;
- the deadline by which a claimant may file an appeal of an adverse benefit determination under the plan’s claims procedure;

- the deadline by which a claimant may file a request for external review after receipt of an adverse benefit determination or final internal adverse benefit determination;
- the deadline by which a claimant may provide information to perfect a request for external review following a finding that the request was not complete; and
- the deadline by which the COBRA election notice must be provided to a qualified beneficiary by the plan administrator.

Subsequent guidance clarified that the Outbreak Period would apply on an individualized basis and would end on the earlier of either: one year from the date the affected individual was eligible for relief from meeting an applicable deadline; or 60 days after the announced end of the National Emergency. On the applicable end date, the time period (e.g., the COBRA “clock”) will resume running.

The FAQs provide helpful examples illustrating the impact that the end of the Outbreak Period will have on the extended deadlines, and illustrating how the deadlines should be administered in the short-term. Notable examples include:

- **COBRA Election and Premium Payment Deadlines:**
  - *Example 1:* Individual A works for Employer X and participates in Employer X’s group health plan. Individual A experiences a qualifying event for COBRA purposes and loses coverage on May 12, 2023. Individual A is eligible to elect COBRA coverage under Employer X’s plan and is provided a COBRA election notice on May 15, 2023. Because the qualifying event occurred on May 12, 2023, after the end of the COVID-19 National Emergency but during the Outbreak Period, the extensions under the emergency relief notices still apply. The last day of Individual A’s COBRA election period is 60 days after July 10, 2023 (the end of the Outbreak Period), which is Sept. 8, 2023.
  - *Example 2:* Individual B works for Employer Y and participates in Employer Y’s group health plan. Individual B experiences a qualifying event for COBRA purposes and loses coverage on July 12, 2023. Individual B is eligible to elect COBRA coverage under Employer Y’s plan and is provided a COBRA election notice on July 15, 2023. Because the qualifying event occurred on July 12, 2023, after the end of both the National Emergency and the Outbreak Period, the extensions under the emergency relief notices do not apply. The last day of Individual B’s COBRA election period is 60 days after July 15, 2023, which is Sept. 13, 2023.
  - *Example 3:* Individual C participates in Employer Z’s group health plan. Individual C has a qualifying event and receives a COBRA election notice on Oct. 1, 2022. Individual C elects COBRA continuation coverage on Oct. 15, 2022, retroactive to Oct. 1, 2022. Individual C has until 45 days after July 10, 2023 (the end of the Outbreak Period), which is Aug. 24, 2023, to make the initial COBRA premium payment. The initial COBRA premium payment would include the monthly premium payments for October 2022 through July 2023. The premium payment for August 2023 must be paid by Aug. 30, 2023 (the last day of the 30-day grace period for the August 2023 premium payment). Subsequent monthly COBRA premium payments would be due the first of each month, subject to a 30-day grace period.
- **HIPAA Special Enrollment:**
  - *Example 1:* Individual D works for Employer A. Individual D is eligible for Employer A’s group health plan, but previously declined participation. On May 12, 2023, Individual D gave birth

and would like to enroll herself and the child in Employer A's plan. However, open enrollment does not begin until Nov. 15, 2023. Individual D and her child qualify for special enrollment in Employer A's plan as of the date of the child's birth, May 12, 2023. Because Individual D became eligible for special enrollment on May 12, 2023, after the end of the COVID-19 National Emergency but during the Outbreak Period, the extensions under the emergency relief notices still apply. Individual D may exercise her special enrollment rights for herself and her child until 30 days after July 10, 2023 (the end of the Outbreak Period), which is Aug. 9, 2023, as long as she pays the premiums for the period of coverage after the birth.

- *Example 2:* Individual E works for Employer B. Individual E is eligible for Employer B's group health plan, but previously declined participation. On July 12, 2023, Individual E gave birth and would like to enroll herself and the child in Employer B's plan. However, open enrollment does not begin until Nov. 15, 2023. Individual E and her child qualify for special enrollment in Employer B's plan as of the date of the child's birth, July 12, 2023. Because Individual E became eligible for special enrollment on July 12, 2023, after the end of both the COVID-19 National Emergency and the Outbreak Period, the extensions under the emergency relief notices do not apply. Individual E may exercise her special enrollment rights for herself and her child until 30 days after July 12, 2023, which is Aug. 11, 2023, as long as she pays the premiums for the period of coverage after the birth.

Prior to July 10, 2023, plan sponsors should begin to review and revise their health plan design and related documents with their plan administrators and legal counsel. To the extent that plan documents and participant communications were modified to reflect the temporary National Emergency deadlines, plan sponsors should evaluate whether the documents need to be revised to reflect the end of the National Emergency.

## **II. Other Topics Addressed by the FAQs**

In addition to the examples illustrating the impact that the end of the Outbreak Period will have on employer-sponsored employee benefit plan deadlines, the FAQs also address the following: (1) coverage of COVID-19 diagnostic testing; (2) rapid coverage of preventative services and vaccines for coronavirus; (3) special enrollment in group health plans and group or individual health insurance coverage after loss of eligibility for Medicaid or CHIP coverage after becoming eligible for premium assistance under Medicaid or CHIP; and (4) benefits for COVID-19 testing and treatment and health savings accounts/high-deductible health plans. These topics will be addressed in a subsequent client alert.

If you have any questions related to the end of the National Emergency, or the information presented in this memo, please contact [Daniel J. Nugent](#), any attorney in [our employee benefits and executive compensation practice](#) or the attorney at the firm with whom you are regularly in contact.

