Employee Benefits Newsletter
December 2024

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Employer Guidance on Revising Evidence of Insurability Practices

The U.S. Department of Labor (the "DOL") has rolled out an initiative over the last two years to investigate insurance companies' practices surrounding Evidence of Insurability ("EOI") for life insurance benefits. These investigations have resulted in several settlements, which provide guidance for other insurance companies and employers to avoid similar legal consequences.

What Is Evidence of Insurability?

EOI is an application process that involves providing health and lifestyle information to an insurer, which is used to evaluate insurability risk. While the specific questions differ by carrier, common EOI data includes the prospective participant's age, physical attributes, personal details, employment and financial information, coverage details, medical conditions, and treatment history. Insurers will typically guarantee the issuance of life insurance at a certain threshold (the "guaranteed issue amount") but require an EOI process before underwriting benefits above this limit.

Insurers use this same process for employer-provided life insurance benefits—guaranteeing a certain amount of life insurance for each employee and requiring an EOI process for additional coverage. However, a recent trend in the life insurance industry is to collect the additional premium for higher insurance levels elected by employees even before the EOI process has been completed or the higher level of coverage was approved. This has resulted in some employees (or their beneficiaries) having benefit claims denied despite the dutiful payment of the premium owed for the increased benefits.

U.S. Department of Labor Investigations

In 2024, the DOL entered into settlements with two major life insurance providers: Unum Life Insurance Company of America and Lincoln Life & Annuity Company of New York. These settlements followed numerous DOL investigations which concluded that collecting life insurance premiums through payroll deductions before confirming EOI requirements are satisfied is common in the insurance industry. These settlements followed nearly identical settlements in 2023 with Prudential Insurance Company of America ("Prudential") and United of Omaha Life Insurance Company. The DOL found that Prudential's use of this practice dated as far back as 2004.

As a result of these settlements, the insurers are prohibited from requesting EOI on coverage for which an employee has been paying premiums for more than a year. Further, the insurers cannot deny a claim for benefits based solely on the fact that EOI was not submitted or approved if the employee had been paying premiums for 90 days or more. Lastly, the insurers must refund all premiums received for coverage requiring EOI if the employee's claim is denied.

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Impact on Employers and Preventative Action

The DOL also required the insurers to notify existing and new policyholders that premiums for coverage subject to an EOI requirement should not be collected from employees until approval is received. The notices must also state that failure to do so may result in the policyholder being liable to the employee or their dependents if their claim is denied.

While these settlement terms do not apply to every life insurance carrier, employers and insurers should still implement practices and procedures designed to communicate EOI approval in an accurate and timely manner. In the absence of further DOL guidance on this subject, case law is instructive. Courts have ruled that prudent fiduciaries must use a system that avoids the employer and insurer having different lists of eligible, enrolled participants. A reasonable method of accomplishing this includes the employer providing a list of employees believed to have valid EOI, having the insurer review this list, and providing a weekly status report that indicates which employees are approved and which still need to submit EOI. The insurer should also notify the employer when employees are approved.

Action Items for Plan Sponsors

In light of the DOL's increased focus on EOI, plan sponsors should re-evaluate the EOI approval procedures applicable to their plans. Additionally, plan sponsors should:

- Ensure that premiums for coverage above the guaranteed issue amount are not being collected from an employee before their EOI is approved by the plan's insurer.
- Consider implementing administration platforms programmed to collect premiums only up to the guaranteed issue amount while the employee's EOI approval is pending.
- Improve or revise the practices and procedures used for communicating EOI approvals between the plan and its insurer.
- Inquire about EOI communication procedures when contracting with insurers.

If you have any questions about evidence of insurability and how it affects your group health plans or need assistance reviewing and negotiating the plan documents or insurance contracts, please contact a member of our Employee Benefits and Executive Compensation group.