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New life insurer settlement with DOL: Employers could be at risk

The U.S. Department of Labor (DOL) recently [announced a settlement with a life insurer](#) requiring employers and insurers to use new guidelines for employee-paid supplemental life insurance where evidence of insurability (EOI) is required to purchase additional employee insurance or coverage for the employee's spouse or child.

The DOL press release noted that the settlement serves as a roadmap for all life insurers, as the DOL "urges all [life] insurers to examine their practices to ensure that they aren't engaged in similar conduct." It is not a giant leap of faith to assume DOL would apply the same criteria of the settlement to other ERISA benefit programs, such as disability insurance when coverage is subject to EOI.

Key takeaways

- Employers must be hypervigilant, ensuring that any EOI requirements are satisfied before payroll deducting for optional life coverage.
- Employers should review enrollment and payroll coordination processes in place with current technology or enrollment platform vendors to ensure alignment of records and identification of outstanding EOI requests on an ongoing basis.
- If the new DOL processes are ignored by an employer, the risks are huge. Life insurance claims are often in the hundreds of thousands of dollars (or more), and an employer's fiduciary liability insurance typically excludes claims for benefits payable under ERISA plans.

Settlement overview

Effective Aug. 11, 2023, the settlement is a sobering reminder to employers that they should not blindly deduct employee premiums for life insurance coverage until the insurer approves the required EOI. Under the new rules, if the employer deducts employee premiums without following the new guidelines and securing EOI, the employer may be financially liable for the death benefits proceeds if the insurer refuses to pay the claim.

The new rules result from a DOL investigation that began in 2017 when Prudential, the life insurer, denied death claims because of lack of EOI, even when employees paid coverage premiums. The DOL alleged that the life insurer was an ERISA fiduciary and was obliged to police eligibility determinations. The DOL press release indicated that Prudential will voluntarily reprocess denied claims dating back to June 2019 and provide benefits for the claims previously denied based solely on lack of evidence of insurability.

Lockton comment: For supplemental coverage amounts that require EOI, employees submit medical information directly to the insurer, who reviews it to approve or deny the request for coverage. The insurer reports the approval/denial back to the employer and/or benefits administrator to begin payroll deductions. Unfortunately, in this case, the processes did not work as intended when employee premium payments were deducted from pay without EOI being satisfied. Note that supplemental life coverage will sometimes be a “guaranteed issue” up to a certain amount. That will not implicate the settlement rules because there is no EOI required.

What the DOL requires with the settlement

The DOL settlement requires a process that depends on the length of time the employee makes contributions for supplemental life coverage. The settlement recognizes the administrative issues of coordinating EOI and payroll deductions and provides employers with a short window to try and manage that process, but that process is not without risks.

Premium payments by an employee of less than three months:

If a death benefit claim is submitted and the employee has paid a premium for less than three months without submitting EOI, Prudential will refund any paid premium to the beneficiary and state the reason for denying the claim. Prudential must “work with the employer and the employee or eligible dependent to effect the proper submission [of EOI].” In other words, if the next of kin can present evidence of the deceased’s good health in effect prior to the date employee deductions began, Prudential must reconsider the death benefit claim.

Lockton comment: Left unanswered by the settlement is whether the employer must reimburse the insurer for any claim the insurer pays where there is no EOI. Unfortunately, this will be the result if the employer deducted the employee premium without obtaining a satisfactory EOI.

Premium payments by an employee of at least three months but less than one year:

Here Prudential cannot deny a death claim “solely” because EOI was not satisfied and must tell the beneficiary to immediately contact Prudential. Similar to the protocol discussed above, if the next of kin can demonstrate the deceased’s good health in effect prior to the date employee deductions began, Prudential must reconsider the death benefit claim.

Premium payments by employee of at least one year:

If the employee pays premiums for at least one year and the beneficiary dies, Prudential cannot request EOI and one assumes must pay the death benefit claim. The employer would be liable for reimbursing the insurer for the claim if it mismanaged the EOI process.

Action steps for employers

Moving forward, a best practice for employers is to deduct employee contributions for coverage above the guaranteed issue threshold only after the employee submits EOI and is approved by the insurance carrier. This may require a review of the process in place for enrollment and payroll coordination with current technology or enrollment platform vendors to ensure alignment of records and identification of outstanding EOI requests on an ongoing basis. For

example, mid-size and large employers often use a “self-bill” approach where they maintain the coverage amounts and do not provide the life insurer with detailed coverage information with billing. Employers may want to do some kind of post-enrollment reconciliation with the carrier to make sure that the employer’s benefits administration system correctly reflects coverage amounts and EOI status.

Another option would be to payroll deduct for up to three months and refund the premiums if the employee does not submit any required EOI within that timeframe. However, that approach will leave the employer vulnerable to death benefit claims if the insured dies in that three-month period. We recommend that employers and/or benefits administrators and insurance carrier partners review and confirm the status of EOI applications at least quarterly.

If an employer outsources the EOI process, it should address the new rules with its vendors as soon as possible. Most plans allow supplemental life coverage at open enrollment and through the year subject to EOI. If the new DOL processes are ignored by an employer, the risks are significant. Life insurance claims are often in the hundreds of thousands of dollars (or more) and an employer’s fiduciary liability insurance typically excludes claims for benefits payable under ERISA plans.

As the DOL is assigning the fiduciary responsibility to the insurer to police eligibility, employers may benefit from migrating to a name-list bill rather than allowing the insurer to default them to submitting a summary bill populated by the employer. Under a name-list billing, the insurer would hold the obligation to align approved benefit value and premium for each individual insured. It could be argued that this detail would serve as confirmation of the insurer’s acknowledgment of coverage and would provide transparency to the employer as a cross-check against payroll withholdings.

To limit the frequency of these EOI events and liabilities associated with tracking changes in coverage or benefit, employers may want to limit requests for changes in coverage to the annual enrollment period and eliminate employee rights to increase benefits at other times of the year.

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