



## Compliance Recap | January 2023

Feb. 5, 2023

2023 began quietly as the dust settles around open enrollment and the plan changes that can come with it.

### Proposed End to the Public Health Emergency and the COVID-19 National Emergency

In a [statement](#) made through the Office of Management and Budget on January 30, President Biden announced his intention to end both the Public Health Emergency and the COVID-19 National Emergency on May 11, 2023. This is months later than both were set to expire and allows a much-needed wind-down period to the years-long protections, funding, and flexibilities these provided. Employers are encouraged to consult with their advisors to see how these changes may impact coverage.

### DOL Announces 2023 Penalties for Health & Welfare Plan Compliance Errors

The U.S. Department of Labor (DOL) recently issued its [annual adjusted amounts](#) for a broad range of penalties assessed after January 15, 2023, for benefit-related violations that occur after November 2, 2015. These include failure to provide employees a Summary of Benefits and Coverage (SBC), failure to file an annual Form 5500, and failure to furnish plan-related information requested by the DOL.

### DOL Releases its Regulatory Agenda for Fall 2022

In January, the Biden Administration released its Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions. The [list](#) outlines the schedule of employee benefit regulatory items from the U.S. Department of Labor in the Prerule, Proposed Rule, and Final Rule review stages. The schedule includes items ranging from requirements related to air ambulances services, to improvements to Form 5500, to coverage of certain preventive services under the Affordable Care Act.

## Question of the Month

**Q:** Can our ERISA employee benefit plans impose a deadline for participants or beneficiaries to file a lawsuit if they wish to challenge a final administrative determination under our plans' claims procedures?

**A:** Yes, plans can impose a deadline for filing lawsuits, if certain conditions are met. As background, essentially all legal claims must be filed within a certain period, referred to as a limitations period or, when established by law, a statute of limitations. Generally, claimants (participants or beneficiaries) will not be able to challenge an adverse plan decision in court if they do not file a lawsuit by the applicable deadline. Because ERISA does not provide a specific statute of limitations for benefit claims, courts typically apply the statute of limitations for the most analogous state-law claim (often breach of contract), with the result that the deadline for filing benefit lawsuits may vary from state to state unless the plan specifies a limitations period. A plan is permitted to specify the period within which claimants must bring a lawsuit (which may be shorter than the period under the otherwise applicable statute of limitations), so long as it is reasonable and there is no controlling statute to the contrary.

By imposing a reasonable deadline under the terms of the plan, you may be able to create a uniform limitations period, avoiding otherwise lengthy statutes of limitations and state-to-state variations. Here are some key considerations in implementing a limitations period:

*What is reasonable?* Whether a plan's limitations period is reasonable is determined by the court hearing the claim. While there is no rule as to a limitations period's length or when it begins, courts have provided some guidance. Several courts have enforced plan-imposed limits of three years; others have found a one-year limit reasonable. The limitations period typically begins when the plan administrator issues a final claim denial (giving rise to the claimant's right to bring an ERISA lawsuit), but it might be measured from a different date.

*What notice is required?* Whether and what kind of notice is required regarding a plan-imposed limitations period also varies among the courts. Many will only enforce the plan's limitations period if it has been disclosed, although some courts will enforce such a plan provision even absent disclosure. An explanation of the plan-imposed limit in the Summary Plan Description (SPD) might satisfy some courts, whereas others will require that the deadline be specified in the benefit denial notice. Plan-imposed limitations that are ambiguous or misleading are not likely to be enforced, so you will want to make sure the terms in your plan document, SPD, and notices are clear, consistent, and unambiguous. Also, make sure to adhere to applicable procedures when amending plans to include such a provision.

If your plan document establishes a reasonable deadline for filing a suit, and it is communicated in your plan's SPD and notices of adverse benefit determination, you may be successful in having the court dismiss a claimant's lawsuit if it was not filed by the deadline.

---

This information is general information and provided for educational purposes only. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.