

DOL Life Insurance Settlement Is a Warning to Plans and Issuers

June 1, 2023

Quick Facts

- A recent settlement requires Prudential to revise certain practices after an investigation found that the company collected life insurance premiums through employer payroll deductions from participants but denied claims for lack of participant evidence of insurance.
- As part of the settlement Prudential must notify plan sponsors of these new corrective actions and requirements moving forward.
- Multiple recent court decisions affirm the importance of revised procedures and warn employers and issuers of potential liability for breach of fiduciary duty.
- It is imperative that all parties understand when evidence of insurability (EOI) is required, to have systems and processes developed to track EOI and audits during open enrollment and throughout the year.

Background

On April 19, 2023, the Department of Labor (DOL) [announced a settlement](#) with Prudential Insurance Company of America (Prudential) requiring Prudential to revise certain practices. An investigation found that the company collected life insurance premiums through employer payroll deductions from participants for an extended period of time but denied numerous claims citing a failure of the plan participants to provide an EOI form at the time of application.

Along with the [Prudential settlement](#), multiple recent court decisions affirm the importance of revised procedures and act as a warning to employers and issuers of potential liability for breach of fiduciary duty under the Employee Retirement Income Security Act (ERISA).

DOL Prudential Investigation and Settlement

Through its investigation, the Employee Benefits Security Administration (EBSA) found that from 2017 to 2020 Prudential denied over 200 supplemental life insurance claims based on the plan participant's failure to provide an EOI form. Despite the failure to collect the EOI, Prudential collected premiums from these plan participants. Investigations of other insurance companies uncovered similar practices.

According to the settlement agreement, effective August 11, 2023, Prudential cannot deny a supplemental life insurance claim under an employer group life policy based solely on failure to provide EOI when Prudential has received a portion of the required premium for the coverage for three months or more. The settlement requirements are broken down by the period in which premiums have been paid:

- If premiums are paid for less than three months before a death benefit claim is submitted, but EOI is not provided, Prudential must refund premiums and provide an explanation for the claim denial.
- If premiums are paid for at least three months, but EOI is not provided, at the time of a death benefit claim Prudential cannot deny the claim solely because of failure to provide EOI.
- If premiums are paid for at least one year, but EOI is not provided, Prudential cannot deny continued coverage for failure to provide an EOI. This means that after receipt of the first premium payment, Prudential cannot consider new medical information to determine EOI such as a new diagnosis, prescription or other information that may affect EOI.

As part of the settlement, Prudential must notify plan sponsors of these new corrective actions and requirements moving forward. In response to the settlement, Prudential informed the DOL that dating back to June 2019, they will voluntarily reprocess claims denied due to lack of EOI.

A Warning from the EBSA

In response to the Prudential settlement, Assistant Secretary for EBSA Lisa M. Gomez stated, “When workers pay life insurance premiums, they should be confident that their beneficiaries will get the benefits they purchased to provide for their financial security. The Employee Benefits Security Administration will take appropriate action against any insurance company that collects regular premium payments from plan participants, and later plays a game of ‘gotcha’ to wrongfully deny benefits based on technicalities like ‘insurability’ after the participant passes away.”

Additionally, the DOL warns that employer plan sponsors, who collect premiums may be liable for claims by beneficiaries for supplemental coverage, if they failed to give notice to the participants that Prudential had not approved their evidence of insurability.

Other Court Decisions and the Impact on Fiduciary Responsibility

In 2022, two Courts found employers and life insurance companies breached their fiduciary responsibilities under ERISA when they collected life insurance premiums for policies without first confirming receipt of the required EOI.

In May 2022, the Eighth Circuit Court of Appeals out of Minnesota held in [*Skelton v. Radisson Hotel Bloomington et al.*](#), that Reliance Standard Life Insurance Company (Reliance) breached its ERISA fiduciary duty when it failed to confirm that no premiums were collected on a policy before EOI was provided and coverage effective. In this case, the plaintiff filed suit against his late wife’s employer Radisson Hotel and Reliance after her claim was denied due to lack of EOI.

In July 2022, the Eleventh Circuit Court of Appeals held in the case [*Gimeno v. NCHMD, Inc. et al.*](#) that an employer can be liable for the value of a life insurance claim, allowing the plaintiff to bring a claim for breach of fiduciary duty against his employer. In this case, the plaintiff sued his late spouse’s employer for breach of fiduciary duty seeking the value of supplemental life insurance benefits and citing errors in the enrollment process that resulted in the spouse not providing an EOI. The Plaintiff stated that the employer never provided the EOI form at enrollment or informed him that it was missing and required. The employer deducted premiums for three years and represented to the employee that he had \$350,000 of supplemental life insurance coverage. The defendant’s employer denies being a fiduciary.

In *Gimeno*, the court states “An entity is a fiduciary under ERISA if it ‘exercises any discretionary authority or discretionary control respecting management’ or ‘administration’ of the plan...Proof of fiduciary status ‘may come from the plan document but can also come from the factual circumstances

surrounding the administration of the plan, even if these factual circumstances contradict the designation in the plan document.”

These cases are examples of how fiduciary responsibility is often a facts and circumstances determination, and how employer plan sponsors can become fiduciaries and be liable for mistakes in plan administration.

Best Practices for Employer Plans

As the EOI process varies by client, carrier and enrollment platform, it is imperative that all parties understand when EOI is required, and have systems and processes developed to track EOI and audits during open enrollment and throughout the year. Examples of new processes may include notifying applicants when EOI files are closed out post-enrollment; performing audits of approvals/denials regularly; conducting premium/coverage audits and requiring carriers to review and sign off on EOI rules programmed in the enrollment platform. Consultants should work with carriers to design optional life programs with flexibility for increases without EOI during open enrollment (OE) and qualified life events (QLEs) to minimize the need for EOI.

Summary

While the recent settlement was focused on EOI for Optional Life Insurance Benefits, there are other employee insurance benefits that may require EOI, including but not limited to short- and long-term disability, and critical illness. Plan sponsors should consider developing enrollment processes for these benefits to ensure that employees are paying for the benefits for which they are eligible and approved.

Action Steps

Covered employers should take the following next steps:

- Understand EOI requirements for all benefit programs
- Work with your carriers and enrollment platforms to develop processes during OE to ensure premium payments are not started until EOI is approved
- Review and update communication materials and plan documents as needed

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