

Shutts Attorneys Published in the Defense Research Institute's ERISA Report

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In an article published in the Defense Research Institute's *ERISA Report*, Jerel Dawson and Michael Larmoyeux, Jr. explain how the new Department of Labor ("DOL") regulations set to take effect on January 1, 2018, undermine the longstanding "exhaustion doctrine" for litigation concerning the Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA, employee benefit plans must provide an appeal process for participants or beneficiaries to obtain full and fair review of an adverse decision. In 2000, the DOL implemented this requirement through detailed claims procedure provisions that apply to group health plans, retirement plans, disability plans, and others. The new DOL regulations, which are based on the rules already applicable to health claims under the Affordable Care Act, will further enhance the scope and importance of these "safeguards."

Neither the regulations nor ERISA require participants to utilize the review procedures provided by a plan. Courts have, however, uniformly adopted the view that a claimant must exhaust the plan's appeal and review procedures -- often referred to generally as "administrative remedies" -- before filing a lawsuit for benefits pursuant to ERISA. While there are typically consequences of a claimant's failure to exhaust the claim procedure, the recent evolution of the DOL regulations calls into question the strength of the longstanding exhaustion doctrine.

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