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Department of Labor
Regulations Committee

Re: Proposed Delay in ERISA Administrative Rule Changes

Dear Committee Members:

My firm has limited its practice to prosecuting disability cases in the arenas of Social Security and ERISA fields. I have prosecuted about 100 ERISA cases against insurance companies, union disability plans and self-insured plan administrators in the US District Court in Colorado and handled many hundreds of administrative ERISA claim matters.

I am one of 3-4 lawyers in Colorado with any substantial experience in ERISA disability litigation in the federal courts, which underscores an important point: this is a very difficult practice that leaves most attorneys perplexed and, consequently, unwilling to handle ERISA disability cases. For private citizens with disabilities, the current ERISA system is incomprehensible. This is magnified 10-fold when insurance carriers are acting both as claim administrators for their own disability policies and third-party administrators for employer's FMLA plans, which have different deadlines that ordinary citizens easily confuse.

For experienced ERISA litigators, the administrative appeal against an insurance company's representative is a complex game of chess. I have to foresee what the insurance company's next 3 moves will be and act accordingly to counter them. Generally, I do not have any rebuttal after the final denial, when *new* evidence is typically unveiled by the insurance company. On the other hand, at least I know the rules. Private citizens have no hope of comprehending this process: they do not even realize it is a game. They think they are dealing in good faith with the insurance carrier, not realizing that the carrier has an overriding profit motive in denying their claim. They do not know that the playing field (in terms of the burden of proof) is not level in any way. They are utterly clueless that they can make irreparable mistakes (of omission, mostly) during the administrative process that will prevent them from having their claims

decided on the merits of the medical evidence.

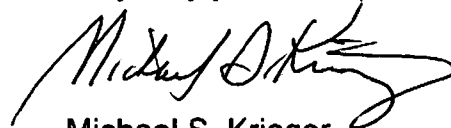
Often, private citizens think that they can hire a lawyer after the administrative appeal is done. That is true, but, by that time, irreparable damage can occur to their claim. I estimate that 50% of the claims I turn down are claims where mistakes of omission, made by unrepresented disabled citizens, were made during the administrative appeals process.

The new ERISA regulations will help people who are unrepresented during the administrative appeals process. Delaying implementation of the new ERISA regulations will result in private citizens, who think they are on a level playing, from being deprived of a resolution of their claim based on the merits of the medical evidence, as opposed to a technical mistake they made while unrepresented.

I submit that further delay is unnecessary and counterproductive. Surely, a more accurate assessment of the true costs of implementation of these regulations will be available *after* the regulations are implemented. Otherwise, the conclusions of the industry could well be speculative.

Thank you for your kind attention.

Very truly yours,



Michael S. Krieger