


Limitations Periods in Benefit Plans— Guidance From the Courts

by | Osvaldo Vazquez

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Setting a reasonable limitations period can help benefit plans control litigation expenses, ensure equal treatment of claims and reduce uncertainty.

Litigation involving benefit claims can be varied and unpredictable in the best circumstances. But the challenges reach another level when an employee benefit plan must deal with a ten-year-old claim. Memories fade, personnel change and records get lost. Worse, health plans and others may face unexpected financial exposure, not to mention legal bills, that can affect their ability to serve their participants.

Plans can try to reduce their exposure to such challenges by adopting a clear, reasonable *limitations period*—the length of time in which a legal action can be brought. Five years ago, the Supreme Court made clear that plan provisions setting a limitations period are appropriate and enforceable. In the years since, courts have fleshed out the framework the Court laid out, providing detail on practices plans should consider when adopting and implementing a limitations period.

A well-designed limitations period provision can protect plans and their fiduciaries while ensuring that claimants' rights are protected. Plan trustees and administrators should consider whether to have a limitations period at all, how long to set the period, how and when to communicate information about the provision to claimants, and how to implement such rules.¹

The question of what limitations period applies when a participant sues a benefit plan or its fiduciaries can be complex and critically important. This is particularly true for plans with participants in multiple states. The Employee Retirement Income Security Act of 1974 (ERISA) does not set forth limitations periods for certain types of suits, including benefit claims, and courts typically borrow from state statutes of limitations. In the past plans have sought to address this issue by specifying a limitations period in the plan document itself.

Background

A limitations period provision simply governs how long a claimant can wait before suing an employee benefit plan. ERISA contains specific limitations periods for fiduciary claims—A plaintiff must sue no later than six years after the triggering event or three years after he or she has actual knowledge of a breach, with some exceptions.² But ERISA is silent for nonfiduciary suits such as health benefit claims, claims of interference with ERISA rights or document request claims. Courts therefore look to state law and “borrow” limitations from the most analogous statute. The result

is a patchwork of limitations periods ranging from one to ten or even 15 years.³ Litigation may arise over what limitations period even applies—State law may be unclear, the plan and participant may be in different states, or the suit may involve multiple plaintiffs.

To avoid the need to consult state law, a plan may specify that a claimant must bring suit within a certain period after a triggering event (such as a claim denial) or within a certain period after completing the internal appeals process. Courts have long upheld such provisions, though courts in different jurisdictions have varied in their approach. Some required that the state law authorize the period, while others held that the period could not begin before a plan finally denied a claim and appeal.⁴

In 2013, the Supreme Court substantially reduced the uncertainty surrounding plan limitations periods through its decision in *Heimeshoff v. Hartford Life & Accident Insurance Co.*⁵ The specific question involved when the limitations period could begin. The Court held that the clock could start running before the internal appeals process ended, so long as it left a reasonable period after the process ended. More broadly, the Court signaled that courts should generally apply plans' limitation periods, noting that “[t]he principle that contractual limitations provisions ordinarily should be enforced as written is especially appropriate when enforcing an ERISA plan.”

Why Include a Limitations Period?

Specifying a limitations period in a plan has a number of clear benefits.⁶

- **Uniformity.** Having a single limitations period offers a particularly compelling advantage for plans that operate across numerous states. But even smaller plans may face questions about which limitations period should apply when certain situations occur, such as a participant receiving medical care on vacation or a beneficiary needing health care while away at school on the other side of the country. Having one period ensures all claims are treated equally.
- **Certainty.** Decision makers for a plan with a limitations period will be better able to plan for suits and budget accordingly. Plans with a potential universe of claims extending ten or more years (or some indeterminate period) will face uncertainty, affecting budgeting and forecasting decisions.

- **Controlling litigation expenses.** Plans with a clear, well-designed limitations period will be able to reduce the need for litigation over which statute of limitations applies. As outlined below, *Heimeshoff* still allows for the possibility of litigation over questions such as whether a limitations period should be waived so plans cannot eliminate disputes altogether. But a substantial reduction in unproductive litigation provides a clear upside to plans.

Legal Framework

Heimeshoff settled the question of whether a plan may include a limitations period at all and resolved the major issue of when it may begin. The case introduced several qualifiers and left several questions open, however, that other courts have begun to address in the five years since the decision. Plans should keep these in mind in designing and implementing limitations periods.

Heimeshoff arose out of a long-term disability claim. Plaintiff Julie Heimeshoff submitted her claim form in 2005 and pursued internal plan appeals through September 2007. The plan issued a final denial on November 26, 2007, and Heimeshoff sued nearly three years later, on November 18, 2010. The district and appellate courts held that the suit was untimely because the plan required that she sue within three years after proof of loss was due (in fall 2005), not three years after her appeal denial. Heimeshoff argued that the triggering date could not come before the plan's final denial, since any court claim would not even exist until that point.

The Supreme Court unanimously affirmed the district and appellate

court decisions. It noted that statutes of limitations typically begin running on the date a legal claim accrues, but not always. Moreover, the Court cited the “critical aspect” of the case—The parties had agreed by contract to start the limitations period at a specific time. The Court noted that a long line of authority allows parties to contract around a default statute of limitations, which necessarily allows parties to agree to the date that period should begin as well. The opinion stressed that this principle is “especially appropriate when enforcing an ERISA plan,” since the plan is at the center of ERISA.

While all but endorsing the use of limitations periods and clauses governing when the clock starts, *Heimeshoff* introduced several qualifiers. The opinion cautioned that courts should enforce a limitations period unless “the period is unreasonably short” or a “controlling statute prevents the limitations provision from taking effect.” It offered little guidance on the meaning of either caveat. In addition, the Court noted that claimants could seek immediate judicial review if the plan administrator did not comply with Department of Labor (DOL) claim regulations and that claimants could rely on traditional doctrines—waiver, estoppel and equitable tolling⁷—to challenge enforcement of limitations periods. Courts in the years

following *Heimeshoff* have begun fleshing out these aspects of the case, as well as several related questions, providing guidance to plan decision makers.⁸

Suggested Practices and Outstanding Questions

Setting a Reasonable Limitations Period

Courts have addressed a range of limitations periods, generally holding that periods allowing a claimant a year or more in which to file suit are acceptable (though the analysis turns on the facts and there is no guarantee that a different court would agree).

In *Heimeshoff* itself, the Court upheld a three-year period which, because of the internal appeals process, resulted in the claimant having only one year to sue after her claim accrued.⁹ A Kentucky district court upheld a provision allowing the claimant six months after her claim accrued, noting that “federal courts have routinely upheld limitations in ERISA plans even shorter than six months.”¹⁰ A Louisiana court likewise surveyed the case law, noting that courts had upheld periods ranging from 120 days to two years, concluding that a period shorter than 90 days would be unreasonable on its face.¹¹ A recent academic article collected cases upholding periods from 45 days to

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three years.¹² All told, the main benefits from including a limitations period will follow adoption of a one- or two-year period just as they will with a 90-day period, and a plan may consider erring on the side of a conservative, longer period.

Ensuring the Limitations Period Does Not Conflict With a “Controlling Statute”

The question of what constitutes a “controlling statute [that] prevents the limitations provision from taking effect” is less clear. Courts have issued opinions on a handful of specific statutes, holding, for example, that certain California and New York laws regulating insurance policies fit the definition of a controlling statute,¹³ but that a Missouri statute prohibiting parties to a contract from shortening the default period was not a “controlling statute,” at least as applied to a self-funded plan. The ruling on the Missouri statute reasoned that applying the statute to such plans “would . . . risk creating a national crazy quilt of ERISA limitations law, with contractual limitations enforce-

able in some states but not in others, contrary to the uniformitarian policy of the statute.”¹⁴

The difference, thus, appears to turn on issues of preemption—as the New York court explained, “with the exception of self-funded plans, which are deemed not to be insurance companies for the purposes of state insurance law, ERISA’s preemption provision contains a categorical exception” for state laws regulating insurance.¹⁵ Plans should therefore examine the laws of the states in which they operate, determine whether those laws apply or would be preempted, and ensure that any limitations period selected is compatible with such a law.

Providing Appropriate Notice

The question of what notice plans must provide regarding the limitations period also is unsettled. There is no dispute that a limitations period must be clearly set out in the plan itself—*Heimeshoff* turns on enforcing clear plan language. The issue is what notice must be provided in denial letters. That question turns in part on the

DOL claim regulations. The provision governing benefit determinations requires that notices include “a description of the plan’s review procedures and the time limits applicable to such procedures.” Notices also must include a statement of a claimant’s right to sue under ERISA following an adverse benefit determination on review; the provision governing determinations on review lacks language regarding time limits.¹⁶ As the Eleventh Circuit has noted, the situation is “anything but clear” regarding what notice is required in either the initial or final denial letter.¹⁷

Unsurprisingly, courts have reached different outcomes. The First, Third and Sixth Circuit courts of appeal have held that the regulations require denial letters to include a notice; the Ninth, Tenth and Eleventh Circuits have reached the opposite conclusion.¹⁸ The Eleventh Circuit case points to a good reason to provide notice, even if not required (aside from fairness considerations). In that case, the claimant argued that *equitable tolling* (delaying operation of the limitations period), one of the defenses *Heimeshoff* listed, should excuse her failure to comply with the limitations period. But a claimant’s diligence is an essential element for equitable tolling, and the plaintiff’s failure to request documents for four years, despite the denial letters’ saying such documents were available, doomed her argument. Including notice of a limitations period in the denial letter only strengthens arguments against doctrines such as equitable tolling, ensuring that contractual limitations periods are properly enforced. In short, even in jurisdictions where courts do not clearly require notice in denial letters, there are good reasons to provide it.

takeaways

- Limitations periods govern how long a claimant can wait before suing an employee benefit plan.
- The Supreme Court has ruled that plan provisions setting a limitations period are appropriate and enforceable.
- Advantages of a limitations period include uniformity in the treatment of claims, greater certainty when planning for lawsuits and a reduction in litigation expenses.
- A limitations period of between one and two years is likely reasonable.
- Plans should ensure that their limitations periods do not conflict with laws in the states in which they operate.
- A limitations period must be clearly communicated in a plan, but courts have been divided on what notice must be provided in claims denial letters.

Ensuring the Claims Process Runs Promptly

Finally, plans should be aware that the enforceability of a limitations provision may turn, in part, on whether the plan processed the claim and appeal appropriately. If a limitations period starts the clock before the claims process is exhausted, prompt processing ensures that claimants have a reasonable period to decide whether to bring suit and supports arguments that doctrines such as equitable tolling, waiver or estoppel should not apply.

There is no guarantee that any of these practices will eliminate needless disputes, but following them should ensure that a plan is able to protect its interests while preserving members’ rights to bring meritorious claims. 6

The views expressed in this article are the author’s own and are not necessarily those of Steptoe & Johnson LLP.


Endnotes

1. This article is for general information purposes and is not intended to be and should not be taken as legal advice. Readers are encouraged to consult a legal professional for individualized advice.
2. See the Employee Retirement Income Security Act (ERISA) §413, 29 USC §1113.
3. See Jennifer Saba and Russell Greenblatt, “The Potential Advantage of Incorporating a Contractual Limitations Period Into Welfare Benefit Plans,” *Benefits Law Journal*, Vol. 21, No. 3, at 3-4 (2008) (reporting periods for denial-of-benefits suits). Courts similarly “borrow” state limitations periods for contributions lawsuits; this article does not address such suits.
4. See *id.* at 12-13.
5. 571 U.S., 134 S.Ct. 604 (2013). While *Heimeshoff* involved claims arising from a welfare plan, its principles and courts’ subsequent holdings apply to pension plans as well.
6. Plans may see many of these benefits from “choice-of-law” or forum selection clauses, which are similar to limitations period provisions. Choice-of-law clauses typically require a plan to be applied under the laws of a single state, unless preempted by ERISA, while forum selection clauses require claimants to sue in a specific court.
7. In general, each doctrine essentially stops or delays the limitations period, usually based on principles of fairness and equity. *Waiver* applies when a defendant is found to have given up the right to enforce the limitations provision, either through explicit agreement or through failure to raise the defense. *Estoppel* prevents enforcement when the defendant’s own conduct (such as concealment of key facts) has prevented the plaintiff from timely filing suit. *Equitable tolling* delays operation of a limitations period where extraordinary circumstances beyond the plaintiffs’ control prevent timely filing.

8. While plans included limitations periods before *Heimeshoff*—the Court called such provisions “common”—the opinion appears to have led to wider adoption or at least to fewer lawsuits involving statutes of limitation. A Westlaw search shows that there were about 45% fewer suits addressing statutes of limitations in ERISA benefits suits in the five years after *Heimeshoff* than in the five years before.

9. *Heimeshoff*, 134 S.Ct. at 612-13.
10. *Hewitt v. W. & S. Fin. Grp. Flexible Benefits Plan*, No. CV 16-120-HRW, 2017 WL 1658825, at *3 (E.D.Ky. May 1, 2017).
11. *Center for Restorative Breast Surgery, L.L.C. v. Blue Cross Blue Shield of Louisiana*, No. CV 11-806, 2016 WL 7468165, at *9-14 (E.D.La. May 6, 2016). The Eleventh Circuit relies on several “instructive factors” to gauge reasonableness, including whether there was any “subterfuge” to prevent lawsuits and whether the limitations period is consistent with a plan’s other claims-processing provisions. See *Webb v. Liberty Mutual Insurance Company*, 692 F. App. 603, 607-08 (11th Cir. 2017).
12. Barry L. Salkin, “Internal Statutes of Limitation under ERISA,” *Benefits Law Journal* Vol. 31, No. 2, at 5 nn.46-47.
13. *Gray v. United of Omaha Life Ins. Co.*, 251 F.Supp. 3d 1317, 1323 (C.D.Cal. 2017); *Halpern v. Blue Cross/Blue Shield of W. New York*, No. 12-CV-407S, 2014 WL 4385759 (W.D.N.Y. Sept. 4, 2014); see also Salkin, *supra*, at 6-8.
14. *Munro-Kiensta v. Carpenters’ Health & Welfare Trust Fund of St. Louis*, 790 F.3d 799, 803-04 (8th Cir. 2015) (quoting *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 874 (7th Cir. 1997)).
15. Halpern, 2014 WL 4385759, at *4; ERISA §514(b)(2), 29 USC §1144(b)(2).
16. 29 CFR 2560.503-1(g)(1)(iv).
17. *Wilson v. Standard Insurance. Company*, 613 F. App. 841, 843-44 (11th Cir. 2015).
18. See Salkin, *supra*, at 9 (collecting cases). In addition to providing notice of the limitations period, clarity in communications to participants can help address the question of when a legal claim comes into existence, which can itself be an issue that triggers litigation.

bio



Osvaldo (Oz) Vazquez is an associate at Steptoe & Johnson LLP, where he helps clients navigate employee benefits issues. He has represented benefit plans and their fiduciaries in all phases of Employee Retirement Income Security Act (ERISA) and civil litigation. He has written briefs on a range of ERISA legal issues and has argued trial court motions and appeals in a range of matters. Vazquez holds a B.A. degree from Florida State University and a J.D. degree from Harvard Law School.

