

A New Wave Of Class Action Lawsuits Targets Employers That Provide Deficient COBRA Notices

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12.19.2016

In a series of recent class action lawsuits involving Wal-Mart Stores Inc., BB&T Co., Shipcom Wireless Inc., and other employers, current and former employees who were eligible for COBRA continuation health coverage have alleged that they were unable to receive such coverage because they received deficient COBRA notices. The complaints generally allege that the notices employees received were “confusing” and “ambiguous,” in violation of COBRA. Earlier this year, SunTrust Banks, Inc. settled a similar dispute for \$290,000 and more recently, one such lawsuit survived a motion to dismiss by the defendant company. COBRA requires that employers that sponsor a health plan and employ at least twenty employees must meet specific notification timing and content requirements at the time of initial enrollment and when COBRA is elected. Failing to comply with COBRA could lead to penalties of up to \$110 per day for each individual. In many of the cases listed above, the employers either did not use or only partially adhered to model COBRA notices provided by the U.S. Department of Labor (DOL). Although employers are not required to use the DOL's model notices, deviating from such notices may place an employer at greater risk of accidentally omitting required information or facing a challenge regarding the notices. For instance, in one case, the plaintiffs allege that the employer retained information from the model notice that served the employer's interest while omitting other important information pertaining to the employee's rights. The employees alleged that they were unable to obtain COBRA coverage because the notices were deficient and unclear. As another example, one COBRA election notice did not clearly state that a

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spouse of a covered employee or legal guardian could elect continuation of coverage on behalf of other beneficiaries, and, in other cases, notices lacked the contact information for the COBRA administrator. The plaintiffs are seeking corrected notices to be issued and payment of statutory penalties of \$110 per day to each participant/beneficiary with respect to whom the company allegedly failed to comply with the notice requirements. This new wave of litigation should place employers on notice as to the importance of reviewing the COBRA notices provided to qualified beneficiaries and the procedures for providing such notices.