

COURT REVERSES AWARD OF COBRA PENALTIES

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The Sixth Circuit Court of Appeals reversed a district court's decision to award statutory penalties resulting from a late Consolidated Omnibus Budget Reconciliation Act ("COBRA") election notice. In this case, the plaintiff/employee had coverage under her employer's group health plan when she went on a Family Medical Leave of Absence ("FMLA"). Under the terms of the plan, she would remain eligible for coverage when she was on leave. However, the plan required all participants (including those on leave) to timely pay their portion of the premium in order to remain covered under the plan. While on leave, the plaintiff/employee began receiving workers' compensation payments and her employer deducted her portion of the group health plan premiums from her workers' compensation checks. When the workers' compensation payments ended, the employer notified the plaintiff/employee that she needed to pay an additional amount to continue her coverage. When no additional payments were made, her employer terminated her coverage.

The plaintiff/employee sued, claiming in part that her employer failed to timely provide her with a COBRA election notice. The district court agreed, awarding her incurred claims and a statutory penalty. On appeal, the Circuit Court reversed the district court's decision. The Circuit Court held that the loss of coverage resulted from the plaintiff/employee's failure to pay premiums, not the FMLA leave or accompanying change in payment method. Under COBRA, a qualified beneficiary must be sent a COBRA election notice, if she has a qualifying event that causes a loss of coverage. Here the Circuit Court held that, although there was a qualifying event (i.e., a reduction of hours when the employee went on leave), it did not cause the loss of coverage. Rather, the non-payment of premiums caused the loss of coverage. The Circuit Court further clarified that the change in the contribution method was not a "loss of coverage" because it did not constitute a change in the "terms" or "conditions" of coverage. As such, the employer was not required to offer COBRA coverage to the employee.

Employers often overlook how an employee's eligibility for (and payment of) benefits is affected by a leave of absence. As this is an area of significant potential liability, we recommend employers review their leaves of absence policies and coordinate those policies with the eligibility and contribution provisions in their plan documents. *Morehouse v. Steak N Shake, Inc.* (6th Cir. 2019).

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