

## In Sixth Circuit, a Change in Contribution Payment Methods under a Group Health Plan is not a Loss of Coverage under COBRA

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In *Morehouse v. Steak N Shake*, the U.S. Court of Appeals for the Sixth Circuit (the “Sixth Circuit” or “Circuit Court”) reversed a federal district court’s prior holding that a change in contribution payment methods under a group health plan constitutes a loss of coverage under COBRA. The plaintiff was a participant in Steak N Shake’s (“SNS”) group health plan when she sustained a work-related injury. Due to her injury, she took a leave of absence (and thus incurred a reduction in her work hours) and began receiving workers’ compensation benefits. Because the participant was not receiving her usual salary from SNS, SNS instead deducted her contributions toward her plan coverage from her workers’ compensation checks. When the participant’s workers’ compensation payments terminated, SNS informed her that she must continue to pay her required plan contributions out-of-pocket in order to continue her coverage under the plan. When she did not make a required payment, SNS discontinued her coverage without offering her COBRA coverage. The participant filed suit claiming that her reduction in work hours following her injury, together with the required change in her contribution payment method, was a “qualifying event” under COBRA which entitled her to notice of her COBRA continuation coverage rights. The district court agreed and required SNS to pay both compensatory damages and statutory penalties. On appeal, the Sixth Circuit reversed the district court’s decision. The Circuit Court found that a COBRA qualifying event did not occur when the participant first began her leave of absence because, although a reduction in hours (one type of COBRA qualifying event) occurred, the participant did not experience a loss of coverage at that time because (i) her contributions were deducted from her workers’ compensation payments and (ii) her plan coverage continued unchanged.

The Sixth Circuit then considered whether a deferred loss of coverage occurred when SNS changed the participant’s contribution payment method, noting that, under COBRA, a “loss in coverage” occurs when there is a change in the terms and conditions of coverage. The Circuit Court held that SNS’s alteration of the participant’s contribution payment method did not change the terms and conditions of her coverage and thus did not cause a deferred loss of COBRA coverage. As a result, no COBRA qualifying event occurred, and no COBRA election notice would be required.

Although the employer in this case did not violate its COBRA notice obligations toward the participant, the employer was subject to a costly lawsuit to defend its position. When terminating a participant’s group health plan coverage for a reason that does not trigger COBRA rights, an employer should consider communicating proactively with the participant to inform him that the termination of coverage does not entitle him to COBRA continuation coverage.

The Sixth Circuit’s opinion is available [here](#).