

More COBRA Election Notice Litigation: Are Your Mailing Procedures Adequate?

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PRACTICES Employee Benefits M&A, Employee Benefits and Executive Compensation

The last few years have seen dozens of lawsuits filed alleging failures associated with COBRA election notices. Generally, these complaints allege that (i) any deviations from the DOL model COBRA election notice (a) were done to save money for the employer and deter employees from electing coverage, and (b) resulted in a notice that would not be understood by the average participant, and (ii) the election notices did not include the required content prescribed by applicable COBRA regulations. Recent cases highlight another area of potential litigation whether proper mailing procedures for the election notices have been followed and can be proven by the employer.

In one such case, a former employee was provided a COBRA election notice for medical coverage that was sent to her former mailing address because an updated address had not been provided to the employer's third-party COBRA administrator. The court noted that the employer's delegation of COBRA administration did not absolve it of liability when the employer failed to provide the last known address to the COBRA administrator. The court denied summary judgment motions and found that there was a question of fact regarding whether (i) the former address was the last known address and (ii) the employer made a good faith attempt to send the COBRA election notice.

This case serves as a reminder to employers of their responsibility to ensure that adequate mailing procedures are in effect for COBRA election notices and that, in the event of litigation, the employer may be held responsible if the COBRA election notice is not properly provided by the COBRA administrator.

The court's opinion in *Howard v. Ivy Creek of Tallapoosa, LLC*, No. 20-0213 (M.D. Ala. Sept. 22, 2022) is available [here](#).