

## Seventh Circuit Affirms No Penalties for COBRA Failures Discovered and Corrected Internally

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The U.S. Court of Appeals for the Seventh Circuit affirmed a district court's denial of statutory penalties for an employer's failure to provide timely COBRA election notices. During an annual internal audit, the employer discovered that it failed to provide COBRA election notices to two employees. To correct this failure, the employer sent the notices to each employee along with an offer to retroactively elect COBRA. The employees did not take the offer and instead sued for statutory penalties. In affirming the district court's denial of statutory penalties, the Seventh Circuit found that there was no evidence of bad faith or gross negligence on the part of the employer. In addition, the court rejected the employees' argument that the employer was, as a matter of law, required to have an oversight system in place to ensure that COBRA notices reach all qualified beneficiaries on time. Although this decision was ultimately favorable to the employer, the litigation could have been avoided altogether if the proper COBRA notice procedures had been followed. *Gomez v. St. Vincent's Health*, No. 10-2379 (7th Cir. Aug. 15, 2011).