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Failure to Provide COBRA Notice Tolls Statute of Limitations

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Under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), an employer that sponsors a group health plan is generally required to provide an employee with a right to continue healthcare coverage after the employee's termination of employment. The employer (or its healthcare administrator) must also notify terminated employees of their COBRA rights. This notice must be given within 44 days from the date of the employee's termination of employment. Although COBRA does not provide a limitations period for improper-notice claims (i.e., the statute of limitations), courts "borrow" the most analogous limitations period from the forum state. On August 22, the United States Court of Appeals for the Eleventh Circuit ruled on the timing of that notice and the statute of limitations for improper-notice claims.

In *Cummings v. Washington Mutual, Cummings v. JPMorgan Chase Bank* (11th Cir., 10-101076, 8/22/11), a former employee claimed that because he did not receive his COBRA notice, he personally incurred over \$2,000 in medical expenses on behalf of his wife. The employee had terminated employment in March 2007 and learned of his failure to receive a COBRA notice in March 2008, when he met with his lawyer. The former employee filed an action under COBRA in July 2008.

The Eleventh Circuit noted that a one-year statute of limitations period applies to COBRA improper-notice claims in this case. The crux of the case was determining when this one-year period of limitations expired and whether the employee's filing was timely.

The employer argued that because the employee filed his claim in July 2008, he was outside of the one-year limitations period because the claim should have been brought within one year of the last date available under the notification deadline (May 2008). The employee argued that his claim was timely because he filed his claim within one year of the date that he learned of the failure to receive his notice (before March 2009).

The Eleventh Circuit ruled in favor of the employee stating that "notice is of enormous importance" in COBRA cases and that his claim for benefits was timely filed despite the

16 months that had lapsed since his termination of employment. The Eleventh Circuit decided that, by beginning the statute of limitations when the notification period expires as the employer suggests, it is possible that the limitations period would run before an employee would even learn of his right to bring an action for a failure to receive a proper COBRA notice. The Eleventh Circuit decided that COBRA improper-notice claims accrue when an employee either knows or should know the facts necessary to bring an improper-notice claim.

This case is important because it effectively requires employers to ensure that former employees actually receive the COBRA notice. This requirement places an additional burden on employers and healthcare administrators. Otherwise, former employees can sue their former employer until they know or should know that they have a right to COBRA coverage, which is the intent of the notice. In other words, if a former employee never receives a notice, even if sent by an employer, the former employee may not learn of their COBRA rights which could leave the statute of limitations period open indefinitely.

For more information about the case, click [here](#).

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