

CASE LAW

COBRA Extensions - Secondary Events and Disability

Birkhead v. St. Anne's-Belfield

(United States District Court, Western District of Virginia, 2005 U.S. Dist. LEXIS 18836 (W.D. Vir. 2005))

When a qualified beneficiary loses dependent status, it clearly is a second qualifying event under COBRA for which a qualified beneficiary notice is required. What was less clear to one employer was who should provide the notice that triggers the employer's election notice requirements.

In this case, a Virginia District Court refused to grant summary judgment to an employer that did not send an election notice because it received notice of the qualifying event from someone other than the covered employee.

After St. Anne's terminated her employment, Janet Birkhead elected COBRA coverage for her family. When her son ceased to be a dependent after turning age 25, both the insurance carrier (in writing) and Mr. Birkhead (orally) notified the employer of the event within the required 60-day time frame. St. Anne's refused to send an election notice and extend COBRA coverage to the son. A literal reading of the COBRA statute, specifically 29 USC § 1166(a)(4)(B), seems to base this obligation on circumstances "where the covered employee notifies the administrator under paragraph (3)". St. Anne's argued it did not have to extend coverage because Mrs. Birkhead did not personally notify St. Anne's.

The Court disagreed. Paragraph (3) states: "each covered employee or qualified beneficiary is responsible for notifying the administrator." The Court concluded: "In promulgating this regulation, the Department of Labor evidently concluded that the language of § 1166(a)(4)(B) does not preclude various sources from providing notice to an administrator, and not just a covered employee acting personally." Thus, the case could continue, with no apparent reason left for the employer's failure to send the election notice.

The 2004 final COBRA regulations did not apply because the events occurred before their effective date. The issue is now clear. An employer who fails to provide reasonable procedures for qualified beneficiary notifications must accept any written or oral notification that comes to its attention if given to the person who usually handles benefits.

This case underscores the rationale that reasonable notification procedures should be in both the general notice and election notice. If some of your current employees have not received an updated general notice since the 2004 final COBRA regulations went into effect, you should consider a blanket mailing of that notice.