

# CASE LAW

## COBRA Penalties And Enforcement

### Enenstein v. Eagle Insurance Agency

(United States District Court, Northern District of Illinois, 2006 U.S. Dist. LEXIS 37235 (N.D. Ill. 2006))

Failing to offer COBRA coverage. Falsely notifying the insurance carrier about COBRA eligibility. Reneging on a promise to a state insurance division after its investigation. Normally, it is three strikes and you're out, but an employer recently tried to escape liability for these alleged actions because of one of COBRA's gray areas: the statute of limitations.

The initial result – prompted by a motion to dismiss – was a strikeout of the employer.

When Louis Enenstein's employment at Eagle Insurance Agency terminated, he waited to receive his COBRA election notice. And waited, and waited. Eagle and its plan administrator, Robert Gainsberg, allegedly failed to send Enenstein an election notice and told the carrier he was not eligible for COBRA. After Enenstein complained to the Illinois Division of Insurance, Eagle and Gainsberg reversed their stance but did not provide coverage retroactive to when Enenstein originally lost it.

When Enenstein sued, Eagle's primary argument was that he filed the action too late. COBRA does not have a statute of limitations, defined as the maximum time period for filing a lawsuit. As a result, courts apply the most analogous statute of limitations from the state where the lawsuit is filed. The Illinois insurance statute of limitations period is two years. Enenstein filed his lawsuit 2 years and 17 days after his employment terminated.

The Court ruled that the statute of limitations period did not start until Enenstein *discovered* that he had been injured by the defendants' actions. Because his discovery occurred well after his employment ended, Enenstein timely filed his lawsuit.

This case is instructive on many levels. First, employers' COBRA notice failures from long ago may still come back to haunt them if the individual does not discover the omission until much later. Second, no segment of industry is immune from COBRA failures, even insurance agencies, which usually have a solid working knowledge of COBRA. Third, while it is not entirely clear if Gainsberg was an Eagle employee, naming individuals as plan administrators often results in personal liability. It is better to assign that role to the employer. Prudent employers may want to review their summary plan descriptions (SPDs) and amend them accordingly.