

Galati v. D & R Excavating

(United States District Court, District of Arizona, 2006 U.S. Dist. LEXIS 28723 (D.Ariz. 2006))

In this case, both sides agreed that the election notice was never sent and COBRA coverage was never offered. What was the dispute? The point of contention was whether the employer's plan was subject to COBRA at all or whether the small-employer exception (for employers who normally employ fewer than 20 people on a typical business day during the preceding calendar year) applied.

Tina Galati argued that her employer, D & R Excavating, should have offered her COBRA when her employment terminated. The Court applied the general rule of counting employees: each full-time employee counts as one employee and each part-time employee counts as a fractional employee based on the number of hours worked. D & R Excavating produced timesheets showing that in the prior year they had fewer than 20 employees in 46 of the 52 pay periods, considerably less than the 50 percent threshold required for COBRA application.

Galati countered with two major arguments. First, she claimed there were several "phantom" employees who were paid under the table. She alleged that one person was Bruce Owens but produced no evidence as to how much he worked (full-time or part-time) or in which pay periods he worked. The Court held that this was insufficient to defeat a motion for summary judgment.

Second, Galati included vacation and holiday time in calculating hours worked. The Court again disagreed, concluding: "[H]er argument flies in the face of the plain text of the regulation."

As a result, the Court decided that D & R Excavating was entitled to COBRA's small-employer exception and granted its motion for summary judgment.