

Sluka v. Landau Uniforms

(United States District Court, Western District of New Jersey, 2005 U.S. Dist. LEXIS 17227 (D. N.J. 2005))

An employer recently learned a costly lesson about the importance of providing timely election notices.

In this case, a New Jersey District Court assessed a \$20 per day penalty and attorney's fees against an employer that neglected to send an election notice to a terminated employee until almost 14 months after the qualifying event. The employer, Landau Uniforms, put forth this defense: there was no evidence of malice or bad faith in its failure to provide the notice. It was simply a case of "honest error."

When Landau fired Carl Sluka, the ex-employee, it failed to provide an election notice until 415 days had passed. The Court considered the fact that the omission did appear to be an honest error and acknowledged that Landau was now offering health coverage retroactive to the loss of coverage date, apparently at its own cost. Proof of injury is not required in assessing a penalty.

Nevertheless, the Court used its discretion in assessing the daily penalty, totaling \$8,300, and award of Mr. Sluka's attorney's fees, which may turn out to be more than the penalty. It could have been worse: the maximum penalty is \$110 per day.

The lesson is frustratingly simple: no matter what the reason, no matter what an employer does to make things right, many Courts will still assess penalties for failure to provide timely COBRA notices.