

### **Starr v. Metro Systems & Deborah Masanz**

(United States District Court, District of Minnesota, 2005 U.S. Dist. LEXIS 20443 (D. Minn. 2005))

Following rules can be a challenge in any walk of life and at any age. One employer and its employee who was in charge of COBRA learned that failing to follow its own COBRA rules is costly.

In this case, a Minnesota District Court held that Metro, the employer, failed to prove timely mailing of an election notice. Thus, Metro was liable for the former employee's medical claims minus the premiums he would have paid, totaling \$113,468.86.

Metro terminated Gary Starr's employment on February 24, 2000. A Metro employee, Deborah Masanz, was in charge of sending COBRA notices. Her standard procedure entailed six steps. Unfortunately for Metro, Masanz deleted Starr's notice shortly after creating it, and she had no proof that she ever mailed the notice. The deleted notice also had the wrong zip code. After Starr notified Metro in late August that he had not received any COBRA information, Metro sent on September 5, 2000, what it considered to be a "duplicate" copy of the notice, even though it did not have a copy of the original notice. Because more than six months had passed, the election period on the "duplicate" notice had already ended.

As a result, Starr never elected COBRA coverage. He did sue to recover the cost of the claims he incurred in the first eight months of what would have been his COBRA coverage. Starr had a daughter, Cotton, who incurred significant medical expenses during that time.

The Court concluded that Metro never gave Starr the opportunity to elect COBRA because the election period in the "duplicate" notice had expired by September. Masanz was an individual defendant and was also found liable for the judgment because she was listed as the Plan Administrator. Another approach is to identify the employer as Plan Administrator and grant a person (by job title) or committee authority to act on its behalf.

Thus, the employer and employee were jointly liable to pay claims, totaling more than \$113,000.

This case emphasizes the need to follow clear notice mailing procedures. The cost easily could have been higher: the Court declined to issue a \$110 daily penalty for the failure to send a notice.