

Washicheck v. The Ultimate

(United States District Court, Western District of Wisconsin, 2005 U.S. Dist. LEXIS 27311 (W.D. Wisc. 2005))

A premium payment defect in an employer's election notice prevented the employer from terminating COBRA coverage for untimely payment.

In this case, a Wisconsin District Court held that when a COBRA participant tried to submit a premium payment more than six weeks after the due date, the employer was not necessarily able to terminate coverage. The reason was simple: a poorly drafted COBRA election notice.

When Erin Washicheck resigned, she elected COBRA and continued a practice of submitting premium payments after the end of the typical 30-day grace period. For example, she submitted her July payment on August 13. The Ultimate, her former employer, accepted such payments and continued coverage until she underwent surgery in early September. On October 14, when Washicheck tried to make her September payment, Ultimate rejected it, and terminated coverage retroactive to August 31. By then, Washicheck had more than \$22,000 in claims.

Terminating COBRA coverage for non-payment or late payment of premiums is a common practice. This should have been a slam-dunk victory for the employer. However, Ultimate's election notice contained the following verbiage: "All subsequent premium payments must be received by the end of the coverage month." The court held that this language could be construed to set the payment due date at the end of the month, not the first of the month, with a 30-day grace period following thereafter. As a result, Ultimate was not entitled to summary judgment, and the case could proceed to trial.

This case should prompt employers who use their own notices to review the payment terms in their election notices. Check to see if you are inadvertently creating a longer grace period than is required by law. Another lesson from this case is the importance of following your COBRA procedures consistently. Making even one exception can create a legally binding precedent.