

CASE LAW

COBRA Coverage - Which Plans Must Be Offered?

Cox v. Transit Group Transportation

(United States District Court, Southern District of Ohio, 2005 U.S. Dist. LEXIS 21698 (S.D. Ohio 2005))

An employee recently sued his former employer for not providing COBRA coverage even though he never participated in the employer's health plan. This would seem to be an open-and-shut case in the employer's favor. However, it was not so easy.

In this case, an Ohio District Court examined an employer's reimbursement of employee COBRA premium payments for coverage offered by his prior employer. The employee paid each month's premium and then was reimbursed by the employer. When his employment with the new employer terminated, the employee argued that the employer should continue the practice.

The Court held that the reimbursements did not constitute an ERISA plan. The key fact was that the employee – not the employer – paid the premiums. Thus, the employer was not obligated to offer COBRA coverage. The employee did not have health coverage through the employer on the day before the qualifying event.

Such reimbursements are an increasingly common practice, especially for plans with extended waiting periods. However, employers often pay these COBRA premiums directly to the carriers. The direct payment of premiums for health insurance is an indicator that a plan has been established. Thus, employers who do this run the risk of having these arrangements construed to be ERISA plans, subject to COBRA. The better practice – as shown in this case – is to reimburse the employee's premium payments. The best approach, though, is simply to increase the employee's pay proportionately for the duration of the waiting period to avoid any argument that an employer is sponsoring – even indirectly – the employee's health coverage.

While the employer prevailed in this case, it hired two attorneys and endured 23 months of litigation to win the summary judgment.