COBRA Premiums

Draper v. Baker Hughes, Inc.

(United States District Court for the Eastern District of California, 892 F. Supp. 1287 (ED. Cal. 1995))

Knowing that his employment with Baker Hughes, Inc. (BHI) would be terminating soon, Gary Draper attempted to elect COBRA in December 1991. He submitted a check for $250.42, the amount of one month's premium, to BHI. They declined payment and informed Draper that he would have to wait until a Qualifying Event took place before he could elect and pay for COBRA coverage. Annual confirmation statements created by BHI and sent to Draper showed the amount of BHI's monthly contribution ($188.51). Draper was contributing $57 a month toward his and his family's coverage. Draper believed that the total contributions to his health insurance amounted to $241.51. Since COBRA allows the employer to charge 102 percent of the applicable rate, Draper calculated the COBRA premium amount to be $250.42. Draper was terminated on February 8, 1992. On February 24, 1992, BHI's third party COBRA administrator, Johnson & Higgins/KVI, notified Draper of his COBRA rights and informed him that the cost for family medical and dental coverage was $786.96. In May 1992, when he could no longer afford the family rate, Draper cut back to single coverage and paid $416.63 a month.

BHI employs over 11,000 people and negotiates a rate for a fully insured group health plan for all employees with Provident Life & Accident Insurance Company (Provident) annually. The case hinged on the fact that the rate was figured for BHI **as a whole** without regard to the risk experiences of its individual divisions. BHI, not each separate division, paid Provident a monthly premium. In one of the low experience divisions, a Qualified Beneficiary was charged a COBRA rate of only $96.33. In Draper's division, identical coverage cost $317.58.

DISTRICT COURT RULING

One of the significant findings of the court dealt with its decision that BHI, not Baker Hughes Corporate, was the "employer." In pertinent parts, the court quoted from the Internal Revenue Code, *"...all employees of all corporations, which are members of a controlled group of corporations...shall be treated as employed by a single employer'....A 'controlled group of corporations' includes a parent-subsidiary, that is, 'one or more chains of corporations connected through stock ownership with a common parent.'"* Furthermore, the court found BHI to be the "plan sponsor" and "plan administrator."

While all this had been addressed in other courts, the ruling on "applicable premium" was new ground. The court noted that the applicable premium is defined as the cost to the plan, not the cost to the employer. The court ruled that in this case the cost to the plan was, in fact, the cost of insuring **all** of BHI's employees, **not the cost of insuring a subset of BHI employees**, such as Baker Hughes Corporate. BHI argued that since it offered COBRA Qualified Beneficiaries of other divisions lower rates when their division was being rebilled at a lower rate, it should be able to pass along the increased cost when applicable, as in Draper's case. The court referred to a House Report addressing "similarly situated beneficiaries." Two factors are impermissible to consider, according to that report:

* Classifications that would be in violation of Title VII of the Equal Pay Act (e.g., race, sex)

* Those individuals that are medically identical

The court found that though BHI had a legitimate business interest in rebilling its divisions based on each division's claim experiences, it was not permissible to break the premiums out that way for purposes of COBRA. The court ruled that Draper had calculated his COBRA premium correctly and should have been charged only $250.42 for his and his family's COBRA coverage. Accordingly, the court awarded him the difference times 18 months ($9,657.72), plus interest, legal fees and costs.

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