

Proof of Mailing COBRA Election Notice Defeats Claim of Non-Receipt

As part of a larger employment discrimination lawsuit, a former employee claimed that her employer failed to provide a COBRA election notice upon her resignation. The employer argued that it had notified its third-party administrator (TPA) of the employee's termination and that the TPA had sent the notice in a timely manner. As evidence, the TPA produced an electronic copy of the notice along with computer records showing the dates on which the notice was created and mailed, supported by an affidavit from a TPA employee responsible for delivery of COBRA notices as directed by this employer. The court ruled that the employer met its obligation by having the notice mailed to the employee and noted that the employee's claim of non-receipt did not mean the employer failed to comply with COBRA.

EBIA Comment: In a lawsuit for failure to offer COBRA coverage, the plan administrator (typically the employer) must demonstrate that an election notice was properly sent. Proof of actual receipt is not required, and the majority of courts are in agreement that a plan administrator need only prove that the election notice was sent to the qualified beneficiary by means reasonably calculated to reach the recipient. While many plans contract with TPAs to provide election notices to qualified beneficiaries, TPAs rarely agree to serve as plan administrator, so the employer/plan administrator typically remains liable for any failure to provide timely election notices. Plan administrators using a TPA to send election notices should verify that the TPA will maintain adequate documentation of what was mailed and when. Additionally, plan administrators should make sure that the TPA agreement provides for indemnification if the TPA fails to properly provide required notices, otherwise fails to follow adequate compliance procedures, or fails to document that adequate procedures were followed.