

COBRA Case Studies

Well-intentioned employers are discovering their mistakes in federal courts.



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▼ **Hersh v. National Distributing Co. Affirmed as National Companies Health Benefit Plan v. St. Joseph's Hospital of Atlanta, Inc.**

Court orders employer to pay in excess of \$1,000,000 in medical claims and more than \$60,000 in legal fees resulting from the premature birth of twins. Employer had mistakenly terminated the COBRA coverage of a COBRA continuant.

▼ **Kidder v. H&B Marine, Inc.**
Affirmed U.S. Appeals (5th Circuit).

Court orders employer to pay more than \$25,000 in medical claims. The employer mistakenly believed that it was not large enough to be required to comply with COBRA.

▼ **Dole v. Dayton-Hudson Corp.**

Department of Labor fines employer for COBRA violations when the employer incorrectly fails to offer COBRA to several employees terminated for “gross misconduct.”

▼ **Dole v. Eastern Airlines**

Department of Labor orders employer to provide on-going documentation of COBRA compliance.

▼ **Skeens v. Village Market, Inc.**

For failure to provide a COBRA continuation notice the court finds the employer and plan administrator jointly and severally liable for more than \$14,000 in statutory damages, reimbursement of medical expenses and attorney's fees and court costs. In addition, the defendants are held liable for future medical expenses that would have been covered under COBRA.

▼ **Philips v. Riverside, Inc.**

Plaintiff was successful in disputing the employer's assertion that a COBRA notice was mailed when court found that

employer's in-house compliance system was not adequate to meet good faith compliance. Employer was ordered to pay \$38,587 for medical bills incurred and \$3210 for statutory damages, and also to reimburse the plaintiff for attorney's fees.

▼ **Branch v. G. Bernd Company**

Court orders employer to extend 60 day election period for a qualified beneficiary who was incapacitated and unable to elect COBRA within the minimum time allowed by law.

▼ **Gaskell v. Harvard Cooperative Society**

Employer must extend COBRA coverage period an additional year because of failure to provide timely notification of rights. The court also agreed with the more liberal interpretation of the length of qualifying events resulting from Medicare entitlement by granting an extension from the date of the entitlement.

▼ **Paris v. F. Korbel & Brothers, Inc.**

Court fines employer for failure to offer COBRA notification to an employee terminated for “gross misconduct.” The court used a state unemployment compensation law to define “gross misconduct.”

▼ **Westhuis v. H.H. Cutler Employee Benefit Plan**

Court orders employer to continue COBRA for an ineligible continuant because the employer accepted the premium payment and told the continuant that coverage was in force.

▼ **Sirkin v. Phillips Colleges, Inc.**

Court disallows employer's COBRA cancellation of a mentally incapacitated ex-employee who did not pay the premium within the appropriate grace period.

▼ **Oakley v. City of Longmont**

Court forces employer to allow terminating employee to have COBRA coverage and spouse's coverage.

▼ **McDonald v. Artcraft Electric Supply Company**

Court allows jury trial for alleged employer COBRA violation when the ex-employee brought suit against the employer under ERISA.

▼ **Conery v. Bath Associates**

Court held that the employer was wrong to deny COBRA benefits to an ex-employee on the twin reasons of “gross misconduct” and coverage under another plan that contained a pre-existing condition. The employer was ordered to offer COBRA to the plaintiff.

Penalties for Non-Compliance

▼ **IRS:**

\$100 per day, per Qualified Beneficiary, excise tax assessed against the employer up to \$255,000 maximum. Annual employer aggregate maximum tax equal to lesser of \$500,000 or 10% of the prior calendar year group plan costs.

▼ **ERISA:**

\$110 per day per event penalty assessed against the *plan administrator*.

▼ **IRS and ERISA:**

Payment of the claim (the insurer is probably under no obligation to insure this claim because of employer negligence).