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COBRA Litigation Risk on the Rise

By Bruce Davis

If you are an employer that is subject to COBRA, you are probably aware that there are significant penalties that the Department of Labor can assess if you fail to offer coverage or give proper COBRA notice to employees or beneficiaries who lose the health coverage that you provide. These penalties are up to \$110 per day for each violation, and they can add up quickly. This alone causes most employers and vendors to take COBRA compliance seriously. What you may not know is that these same employees or beneficiaries can also sue you for common and inadvertent COBRA compliance issues.

COBRA Class-action Lawsuits

Unfortunately, there appears to be a new wave of class-action lawsuits targeting employers who may have used an outdated COBRA notice or maybe did not give clear instructions on where to mail COBRA premiums or really any number of other COBRA compliance violations.

One of the firms filing these lawsuits is ClassAction.com. Visiting their web site you will note a list of common mistakes employers make that can lead to litigation. These mistakes involve more than just missing deadlines in providing a COBRA election notice. The list includes contacting only the employee losing health coverage and forgetting to also contact the covered spouse and dependent children—remember each covered family member has an individual COBRA election right.

The ClassAction.com website also boasts about million dollar settlements recently won on behalf of individuals whose COBRA rights were either violated or not administered properly. This should be a wake-up call for employers to examine their COBRA procedures to ensure full compliance. Given the number of furloughs and lay-offs occurring throughout the U.S. due to COVID-19, this COBRA examination or audit becomes urgent.

Reviewing COBRA Practices

Findley stands ready to assist employers in reviewing their COBRA practices. This can even be in the context of a full [ERISA audit](#). Since many employers outsource COBRA administration to a third party, Findley can also help employers review those administrative agreements and recommend changes to indemnification provisions to protect the employer from the administrator's failures or omissions.

For more information about auditing COBRA administration, please contact Bruce Davis at Bruce.Davis@findley.com or 419.327.4133