Thomson Reuters™

TPA's Proof of Mailing COBRA Election Notice Defeats Claim of Non-Receipt

EBIA Weekly (October 30, 2025)

Casillas-Guardiola v. Bayer Puerto Rico, Inc., 2025 WL 2806814 (D.P.R. 2025)

Available at ***https://www.govinfo.gov/content/pkg/USCOURTS-prd-3_22-cv-01167/pdf/USCOURTS-prd-3_22-cv-01167-1.pdf***

As part of a larger employment discrimination lawsuit, a former employee claimed that her employer had failed to provide a COBRA election notice upon her termination. The employer argued that it was not responsible for sending COBRA notices because it was not the plan administrator and asserted that its third-party administrator (TPA) had sent the notice. As evidence, the TPA produced a copy of the notice addressed to the employee's last-known address and mailing records showing the dates on which the notice was created and mailed, supported by the sworn declaration of the TPA's records custodian.

The court explained that while an employer is permitted to delegate COBRA tasks to a TPA, the duty of notification ultimately lies with the employer, even if a TPA is designated to disseminate the notices. Thus, an employer will not be relieved of liability if its TPA fails to provide notices in a timely manner. Here, however, in light of the evidence produced by the TPA—and the employee's failure to provide evidence to the contrary—the court held that the employer had met its obligations. The court further held that, even if the employer had failed to give proper notice, statutory penalties would be inappropriate because the employer acted in good faith, and the employee presented no evidence that she had been adversely affected. Accordingly, the employee's COBRA claim was dismissed.

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 most courts agree 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 the plan administrator, so the employer typically remains liable for any failure to provide timely 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 and will agree to indemnify the employer for any failure to properly provide required notices. For more information, see EBIA's COBRA manual at Sections XVIII.J ("Sending the Election Notice and Proving It Was Sent") and XXXI.E ("COBRA Third-Party Administration Agreements"). See also EBIA's Self-Insured Health Plans manual at Section XXIII.B ("Contracting With Service Providers") and EBIA's ERISA Compliance manual at Section XXX ("Plan Administration With Third-Party Administrators").

Contributing Editors: EBIA Staff.