

# COBRA Case Dismissed Absent Proof of 20 or More Employees

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*Smith v. Pile*, 2025 WL 40766 (D. Ariz. 2025)

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A disgruntled former employee sued her employer and a private equity firm that had hiring and firing authority over the employer's employees for, among other things, failing to provide a COBRA election notice. The court dismissed the employee's complaint, explaining that COBRA only applies to employers with 20 or more employees and observing that the complaint contained no allegations about how many employees the employer had during the relevant period. Given a second chance, the employee amended her complaint to allege that, while the employer alone did not have the requisite number of employees, there were more than 20 employees combined when considering the employees of the employer and the private equity firm. The employee argued that the two businesses should be treated as a single employer because the equity firm "exerted some control" over her employer. The employer argued that the amended complaint contained no allegations that would allow the two entities' employees to be aggregated to meet the 20-employee minimum.

The court agreed with the employer, stating that the employee made "no meaningful arguments" for why the relationship between the employer and the equity firm would allow their employee numbers to be aggregated. After examining COBRA's "complicated incorporation of...statutory provisions" that determine when potentially separate entities should be viewed as a single employer, the court held that the employee had not adequately alleged that the two entities qualified as a single employer or as members of an affiliated service group. For example, she did not allege that one entity owned at least 80% of the other, that the same individuals owned both entities, that there were common partners, or that one entity performed management functions for the other. She alleged only that the equity firm exerted "some control" over the employer. Finding the allegations insufficient, the court dismissed the COBRA claim—this time without leave to amend.

**EBIA Comment:** A group health plan is not subject to COBRA for any calendar year if the employer maintaining the plan employed fewer than 20 employees on at least 50% of its typical business days during the preceding calendar year. For purposes of this small employer exception, all employees must be counted (not just those covered by the group health plan), and the employees of related employers under common control must be included. Self-employed individuals, independent contractors, or members of a corporate employer's board of directors are not counted (unless these individuals are also employees), and a special fractional rule applies for counting part-time employees. In this case, a more thorough complaint may have produced different results, so employers claiming the small employer exception should be able to substantiate their employee counts with items such as tax documents, timesheets, payroll and personnel records, and workers' compensation reporting forms. For more information, see EBIA's COBRA manual at Section IV.C ("Small Employer Exception").

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