

DEVIL IN THE DETAILS: COBRA COVERAGE DENIED TO FORMER SPOUSE

By: Patricia McGrath, Esq.
Email: pmcgrath@devinemillimet.com
Phone: 603.695.8537

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Timing does matter. That is the message in a recent Pennsylvania case regarding the COBRA eligibility of a former spouse. Bottom line: if the parties to a divorce do not notify a health plan administrator about the divorce within 60 days after the final decree, then the ex-spouse is not entitled to elect continuation of coverage under COBRA.

In Ludwig v. Carpenters Health & Welfare Fund of Philadelphia & Vicinity, et al (E.D. Pa., No. 08-809), Doreen Ludwig and Chester Stepien were divorced under a decree that became final on November 6, 2006. Stepien, a member of Local Union 1906, was a participant in the union-sponsored Health & Welfare Fund named in the case title, and in two other pension plans also sponsored by his union. Although the pension plans had, during the divorce proceedings, been asked to submit financial information, no plan had directly been notified of the issuance of the final divorce decree.

In April 2007, the plans were informed of the final divorce decree, and received written notice in June 2007. However, the Health & Welfare Fund informed Ludwig that the notice had arrived too late: more than 60 days after the final decree. Therefore, COBRA coverage under the plan was not available to her. Ludwig filed suit in the federal District Court for the Eastern District of Pennsylvania, demanding to become eligible for coverage and claiming that the plans acted in bad faith during and after her divorce proceedings.

The District Court pointed out in its discussion that COBRA guidance requires the plan participant or the “qualified beneficiary” – here the former spouse, Ludwig – to notify the plan’s administrator of the “occurrence of a qualifying event [here, the divorce] within 60 days after the date of the qualifying event.” That notice triggers a return notice *from* a health plan, giving the qualified beneficiary required information about the COBRA enrollment process. In this regard, Ludwig argued that the Fund did know about the divorce proceedings, from as early as June 6, 2005, over a year before the divorce was final. Therefore, said Ludwig, it was not necessary that the Fund receive particular notice of the final decree.

Labor, Employment & Employee Benefits

Mark Broth, Chair
603.695.8558
mbroth@devinemillimet.com

Newton Kershaw
603.695.8571
nkershaw@devinemillimet.com

Patricia McGrath
603.695.8537
pmcgrath@devinemillimet.com

Anthony Augeri
978.475.9100
aaugeri@devinemillimet.com

Margaret O'Brien
603.695.8631
mobrien@devinemillimet.com

Anne Scheer
603.410.1708
ascheer@devinemillimet.com

Laurel Van Buskirk
603.695.8565
lvanbuskirk@devinemillimet.com

Anne Trevethick
603.695.8725
atrevethick@devinemillimet.com

DEVINEMILLIMET.COM

EMPLOYMENT@DEVINEMILLIMET.COM

Not so, said the Court. A *pending* divorce is not a “qualifying event” under COBRA. It is the final decree that counts. Since the Fund did not receive timely notice of that final decision, the Court determined, Ludwig was not entitled to elect COBRA continuation coverage.

A careful reading of the applicable sections of ERISA and the Code indicates that neither a participant nor a former spouse have a greater (or lesser) responsibility for notifying the plan about a final decree under COBRA. The applicable sections state that “each . . . employee or qualified beneficiary is responsible for notifying the plan administrator” about the occurrence of a divorce. Case law is scarce, if nonexistent, as to the interpretation or application of this provision of COBRA law and the notice responsibility as between former spouses.

How can an employer and its health plan avoid the expenditure of time and expense of a dispute like the Ludwig case? As with many suggestions in this space: plan ahead, and document your process. Every participant in a health plan, and every spouse of a participant, must receive information about COBRA when the participant first becomes covered under the plan. This general COBRA notice should state, among other details, the notice responsibility of a participant and spouse if a divorce occurs. It is deemed sufficient spousal notice if the COBRA notice is mailed to the home of the participant, so long as the plan believes that the spouse and participant live in the same place.

Some employers include the general COBRA notice in the health plan’s Summary Plan Description, which is permitted under federal Department of Labor guidelines. At the same time, more and more employers are delivering plan information electronically, which is also acceptable to the DOL. Nonetheless, employers need to comply with the ongoing requirement that a participant’s spouse must receive the information to which he or she is entitled, in particular the general COBRA notice.

As always, an employer should strive to maintain - and implement - consistent procedures when administering any workplace benefits. Here, the potential risk to the noncompliant employer lies in the possibility that the COBRA notice requirements are not satisfied. Failing to comply with the notice and enrollment requirements could open the employer to liability for the full cost of a health claim if coverage is denied on account of an employer failure to provide required notices during its COBRA administration.

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Office Locations:

111 Amherst Street
Manchester, NH 03101
T 603.669.1000
F 603.669.8547

300 Brickstone Square
Andover, MA 01810
T 978.475.9100
F 978.470.0618

43 North Main Street
Concord, NH 03301
T 603.226.1000
F 603.226.1001

