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COBRA Penalties for “Innocent Mistakes”—A Recent Court Ruling

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We talk often about the dangers of COBRA noncompliance. A seemingly simple process can lead to easily made mistakes with significant penalties and claims costs. The recent case, shown below, demonstrates the potential damage for even “innocent mistakes.”

The specific case is [Tondalaya Evans v Books-a-Million.](#)

The terminated employee in this case sued her former employer for, among other things, not providing her a COBRA election notice for its group dental plan. The employer did not dispute that the employee was entitled to a COBRA notice but contended that its failure was an “innocent mistake.” Members of the employer’s benefits staff described a complicated process involving three different reports that had to be cross-referenced in order to identify terminated employees who were entitled to receive a COBRA notice. The staff members, including a new benefits coordinator who had only been at the job for a few weeks, were unable to prove that a notice had been provided and offered conflicting reports as to how they had responded

when the employee called to request an election notice.

The court determined that there were too many “contradictions and evasions and disingenuous answers” to conclude that the employer’s failure to mail the notice was inadvertent. In particular, the court noted that the employer had failed to provide a notice despite being given multiple opportunities to do so—first when the employee was terminated, again when she called and requested a notice, and finally when she filed her lawsuit. As a result, the court concluded that the employer intentionally withheld the notice and calculated penalties accordingly. The court imposed penalties from the 45th day after the employee’s termination through the end of the 18-month coverage period that the employee could have elected under COBRA. Based on the employer’s bad faith and “intentional withholding of the COBRA notice,” the court set the penalty at \$75 per day, for a total of \$37,950 plus over \$45,000 in attorneys’ fees and costs. The court noted that the employer, as a large, national company, would be able to satisfy the fee award and that the statutory penalty alone might not be a sufficient deterrent against further misconduct.

This example *only* included monetary penalties. In many cases, if claims were incurred and the COBRA procedures weren’t followed, insurance

companies will not cover the cost of incurred claims. Those claims costs would also be borne by the employer.

Utilizing a trusted COBRA advisor and administrator can help head off

these mistakes, and help mitigate your responsibilities. Contact Kushner & Company to see how to address these issues.

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