

## What's In Your COBRA Notice? The Answer May Lead To A Class Action Lawsuit

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As previously reported in the *Fast Laner*, a number of large employers were hit by a wave of class action lawsuits in 2016 involving claims related to deficient COBRA notices. In the case involving Wal-Mart, a federal judge in Florida denied Wal-Mart's motion to dismiss the complaint in April 2019. The judge determined that the plaintiff suffered actual harm and that Walmart's notice was not written clearly, rejecting Walmart's argument that the notice was easy to understand and compliant under the Employee Retirement Income Security Act (ERISA).

Similar to the *Wal-Mart* case, three more class action complaints alleging claims due to deficient COBRA notices were filed in 2019 including a lawsuit against Target Corporation. In the *Target* case, the plaintiffs are alleging that they were unable to make an informed decision about their rights under COBRA due to the "piecemeal" fashion by which the notice was provided. Target had allegedly provided information about the plaintiffs' COBRA election rights in multiple documents and also allegedly failed to include an actual election form. Of particular interest is the critique of Target's utilization of a general information telephone number to assist with any COBRA questions without distinguishing between the COBRA Administrator and the Plan Administrator.

In a different class action case filed this year that subsequently settled, a COBRA qualified beneficiary alleged that the COBRA notice received failed to identify a termination date for the health care coverage, the name of the plan administrator, and where COBRA premiums should be mailed.

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The plaintiffs are seeking corrected notices to be issued and payment of statutory penalties of \$110 per day to each participant/beneficiary with respect to whom the company allegedly failed to comply with the notice requirements. Given the availability of model COBRA notices issued by the Department of Labor, employers should review their COBRA notices and related procedures to mitigate against the risk of liability.