

# McDonald's Settles Lawsuit Over Deficient COBRA Notices

By Leah Shepherd

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**M**cDonald's recently settled a class-action lawsuit that claims the fast-food chain failed to give former employees proper notice of their right to continued health insurance coverage under COBRA ([www.shrm.org/resourcesandtools/tools-and-samples/need-to-know/pages/what-you-need-to-know-about-cobra-continuation-coverage.aspx](http://www.shrm.org/resourcesandtools/tools-and-samples/need-to-know/pages/what-you-need-to-know-about-cobra-continuation-coverage.aspx)).

In the lawsuit in the U.S. District Court for the Southern District of Florida, the plaintiffs claimed that McDonald's unlawfully omitted required information from its COBRA notices and provided only some details haphazardly across several letters. The company did not use the U.S. Department of Labor's (DOL's) model COBRA notice. This "caused plaintiff economic injuries in the form of lost health insurance and unpaid medical bills, as well as informational injuries," the lawsuit stated.

The lawsuit also alleged that McDonald's wanted to save money by discouraging people from selecting COBRA coverage. McDonalds did not respond to a request for comment.

The amount of the settlement is expected to be included in a motion that's due on Aug. 26.

## Growing Legal Action

"We have been seeing a steady uptick in COBRA class-action lawsuits ([www.shrm.org/resourcesandtools/hr-topics/benefits/pages/companies-face-increased-litigation-over-cobra-notices.aspx?\\_ga=2.6708530.161489676.1660574931-1252972892.1659547707](http://www.shrm.org/resourcesandtools/hr-topics/benefits/pages/companies-face-increased-litigation-over-cobra-notices.aspx?_ga=2.6708530.161489676.1660574931-1252972892.1659547707)), alleging violations of COBRA election notices," said Christine Keller, Ed Meehan and Mark Nielsen, attorneys with Groom Law Group in Washington, D.C., in a joint e-mail. "These are brought by a handful of plaintiffs' law firms with new firms joining the field."

"There has been an uptick over the last few years in cases challenging the adequacy of COBRA notices, some of which actually claim that the notices were inadequate, even when they followed Department of Labor guidelines," agreed Greg Demers, an attorney with Ropes and Gray in Boston. "Many of these cases settle for modest sums, and it is unclear to what extent this trend will persist in the years ahead."

"I would think there will continue to be lots of lawsuits brought on this basis, unless there are district court decisions that a class cannot be certified," commented Marcia Wagner, an attorney with The Wagner Law Group in Boston. "There is no indication that either the Internal Revenue Service [IRS] or DOL is concerned with technical violations of the COBRA notice requirement. The real concern from a plan sponsor perspective is the civil class-action lawsuits that can be brought by former plan participants. If a class can be certified and a defendant cannot get the action dismissed at the earliest possible stage, the defense of these actions can be very expensive, which is why many of these cases result in early settlement."

## Cost for Employers

Group health plans can require beneficiaries to pay for their COBRA continuation coverage, although plan sponsors may choose to pay for part or all of it, according to the DOL. Last year, the American Rescue Plan Act required employers to pay for 100 percent of the COBRA coverage from April 1, 2021, through Sept. 30, 2021, for people who lost their health care coverage after a reduction of hours or involuntary termination. Employers that paid for COBRA coverage received deductions on their quarterly payroll taxes.

Employers do not have to send monthly COBRA premium notices, but they must provide a notice if they end coverage early due to the beneficiary not sending a payment on time, according to the DOL.

Failing to comply with COBRA could lead to expensive legal action for employers. The statutory fine is up to \$110 per day per participant.

"For a large class over a multiyear period, the COBRA penalty could add up to high numbers," Meehan said. "But the statutory penalty is 'up to' and therefore only theoretical. Good faith is a component. Courts must take the facts and circumstances into account before assessing any actual penalty at all. In addition, plaintiffs could be required to claim any provable damages from any failure to receive the notice."

### Common Errors

Whether you handle COBRA administration in-house or outsource it to a third party, try to avoid some common mistakes ([www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/howcanemployerscorrectcommoncobraadministrationerrors.aspx?\\_ga=2.6708530.161489676.1660574931-1252972892.1659547707](http://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/howcanemployerscorrectcommoncobraadministrationerrors.aspx?_ga=2.6708530.161489676.1660574931-1252972892.1659547707)).

"Often employers fail to give a notice for all of their plans that are subject to COBRA. For example, they don't realize the employee assistance program is subject to COBRA," said Lyndsey Barnett, an attorney with Graydon law firm in Cincinnati. "A common error we see in COBRA notices is that they don't contain the legal name of the plan or the contact information for the plan administrator, which is almost always the employer. Other common failures in the notices include not properly describing when COBRA will terminate early and not properly describing the maximum coverage period."

"The COBRA administrator is usually listed, but that in itself is not sufficient. In addition, COBRA notices may not clearly state how payment may be made, and the amount that is due," Keller noted.

Don't overlook COBRA compliance, even when you have other important HR priorities to handle.

"Deprioritizing and lack of oversight tend to be the most common issues we see. Treating COBRA notices as low-priority administrative matters and farming out the task to third-party administrators without proper oversight can create unnecessary headaches down the line," Demers said. "The statute is explicit about employers' notice obligations, and communication is key to ensure that beneficiaries get the information they need when they need it in order to avoid lapses in coverage."

[SHRM members-only interactive tool: COBRA Notices Generator ([www.shrm.org/ResourcesAndTools/tools-and-samples/Pages/Interactive-Tools.aspx](http://www.shrm.org/ResourcesAndTools/tools-and-samples/Pages/Interactive-Tools.aspx))]

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