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Federal Law

An Employer Or Health Plan Administrator Bears The Burden Of Proving That COBRA Notices Are Actually Mailed To Employees.

Crotty v. Dakotacare Administrative Services, 2006 U.S. App. LEXIS 19289 (8th Cir. August 1, 2006)

By Jason A. Geller and David P. Borovsky

After being terminated by her former employer, Kelly Crotty sued the administrator of her employer's group health insurance plan, Dakotacare, for failing to send her the appropriate COBRA notices concerning her right to continue her health coverage. Crotty alleged that she first learned of the option to continue benefits when she received a letter from Dakotacare telling her that her period for exercising that option had expired.

Dakotacare filed a motion for summary judgment, based on the following evidence: (1) an audit report showing that its computerized tracking system had generated a COBRA notice letter to Crotty around the time she was terminated; and (2) the testimony of one of its employees about the company's general procedure for mailing the notification letters that were generated. The District Court granted Dakotacare's motion, and Crotty appealed.

The Court of Appeals for the Eighth Circuit reversed, concluding that

Dakotacare's evidence was insufficient. The Court recognized that Dakotacare did not have to prove that the notice was actually received by Crotty, but only that it sent the notice by means reasonably calculated to reach the recipient. However, Dakotacare had no evidence that the letter generated by its system was actually printed out, placed in a properly addressed envelope, or sent through the mail. As such, in addition to reversing the award of summary judgment in favor of Dakotacare, the Court granted summary adjudication of the issue of improper notice in favor of Crotty.

Although this case holds that an employer or plan administrator need only prove that it mailed the requisite notices to employees at the proper address, it also highlights the types of factual questions that can develop where receipt of the required COBRA notices is disputed. As such, employers and plan administrators may wish to consider sending such notices via certified mail or

hand delivery, where feasible, to avoid uncertainty.

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