

EBIA Weekly Archives

Employer That Did Not Comply With Health Plan's COBRA Notice Requirements Is Not Entitled to Stop-Loss Reimbursement

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[*Majestic Star Casino v. Trustmark*, 2009 WL 3260561 (N.D. Ill. 2009)]

This case involved employees who incurred large health care expenses while on approved 90-day leaves of absence. The employer sought reimbursement for the excess expenses under the stop-loss policy issued in connection with its self-funded health plan. But the stop-loss insurer denied payment, arguing that the employer had been obligated—as a condition of reimbursement under the stop-loss policy—to provide COBRA election notices to the employees within 30 days of their first day of leave. The employer argued that its health plan provided full coverage for the first 90 days of a leave of absence, so that no COBRA election notice was required until the end of the leave (assuming the employee terminated employment by not returning to work). Indeed, one of the employees involved in the case did not return at the end of the leave, and the employer did provide a COBRA election notice at that time. The employer sued the stop-loss insurer for reimbursement under the policy.

The court ruled in favor of the stop-loss insurer. Highlighting language in the health plan that stated that coverage during a leave of absence runs concurrently with coverage continued under COBRA, the court held that the employer could not avoid the terms of its stop-loss policy by not following the express terms of its health plan. The court explained that the plan's use of the word "concurrently" confirmed that the 18-month window for COBRA coverage began when a leave of absence started, not when it ended, even though the loss of coverage may not occur immediately after the beginning of the leave. Thus, under the terms of the plan, the qualifying event for purposes of COBRA was the first day of leave, and the COBRA notice clock began to run on that day. The employer's failure to send COBRA notices on this schedule was a breach of the stop-loss policy, making the employer not entitled to reimbursement.

EBIA Comment: Because COBRA does not apply directly to insurers and stop-loss carriers, these entities are generally not obligated to provide COBRA coverage (or stop-loss coverage for COBRA claims) unless they enter into a contract requiring them to provide that coverage. The policies issued by group health insurers and by stop-loss insurers will generally include provisions requiring them to cover (or provide stop-loss coverage for) qualified beneficiaries who elect COBRA. But such policies often include provisions that allow the insurer to refuse payment unless certain conditions, including notices being given pursuant to the terms of the plan, are met. Employers that fail to follow the terms of their plan may, therefore, end up with no insurance coverage for an individual's COBRA claims. For more information, see EBIA's COBRA manual at Sections VII.L ("Special Issues: Leaves of Absence") and XXVIII.B ("Areas of Potential Dispute With Insurers Regarding COBRA Coverage").

Contributing Editors: EBIA Staff.

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