

## Employer & Sponsor Litigation

# COBRA Litigation

Class action litigation against employers, alleging deficiencies in election notice requirements as mandated under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), have seen a stark increase over the past few years. Under COBRA, most employers are required to provide employees notice to inform them of their right to continue health care coverage under the employer’s plan following a “qualifying event” that results in loss of said coverage.

Plaintiffs’ attorneys have targeted large companies with these lawsuits, with claims asserting technical defects in election notices that allegedly violate COBRA implementing regulations. Plaintiffs seek statutory penalties under ERISA that, although entirely within the discretion of the district court, could run as high as “\$110 a day” per violation. Plaintiffs seek penalties on behalf of putative classes (which, given the size of the companies being sued, could include hundreds of thousands of members), meaning that these lawsuits bring litigation risk of hundreds of thousands, if not millions, of dollars for plan sponsors for what many would consider minor COBRA failures.

Since 2016 at least 65 of these lawsuits have been filed, and we expect more to come—currently new COBRA lawsuits are being filed at a rate around 1–2 per month. Employers are being faced with the tough decision to either settle or defend their notices in litigation. Amid this increase in litigation activity are a number of new COBRA-related obligations being imposed on employers by recent legislation caused by the COVID-19 pandemic, placing a significant burden on employers and administrators alike.

Numerous employers have turned to Groom when they find themselves on the receiving end of COBRA-related claims. Having opened our doors 50 years ago to operate exclusively in the employee benefits and ERISA legal field, our cross-practice health and litigation experts are well-versed in the day-to-day technicalities of the rules surrounding COBRA as well as broader retirement and welfare plan issues under ERISA. In fact, Groom attorneys are routinely brought in to assist clients with COBRA compliance matters helping them to avoid becoming subject to legal action altogether.

Groom attorneys have represented plan sponsors in multiple COBRA lawsuits. Groom has brought a multi-faceted defense strategy to these cases, including briefing dispositive motions on legal defenses, developing defensive facts from named plaintiffs, and vigorously opposing class certification. Where strategically appropriate, Groom has been successful in mediating and negotiating advantageous class settlements for its clients.