



## Retail Giant to Settle Class Action Lawsuit Over Deficient COBRA Notice

A membership-only retail chain has agreed to settle a class action lawsuit brought by 38,000 former employees over the retailer's allegedly deficient COBRA notice, which may have violated ERISA by failing to provide participants and beneficiaries adequate notice of their right to continue their employer-sponsored health insurance coverage following the occurrence of a "qualifying event," such as termination of employment.

The former employees asserted that the retailer's COBRA notice violated ERISA because it: (i) included inaccurate and misleading threats of non-existent criminal penalties and fines for submitting "incomplete" information; and (ii) was not written in a manner calculated to be understood by the average plan participant.

To facilitate compliance with the federal COBRA notice obligation, the Department of Labor (DOL) drafted and issued a Model COBRA Continuation Coverage Election Notice (Model Notice) that, when correctly completed by employers, is considered to be a "safe harbor" for purposes of compliance with

the federal COBRA notice requirements. Here, however, the former employees asserted that, rather than using the Model Notice, the retailer authored and disseminated a COBRA notice that omitted critical information required by law and needlessly included language meant to discourage the election of COBRA continuation coverage. Moreover, to further deter the election of COBRA continuation coverage, the former employees pointed out that, while the DOL's Model Notice is seven pages long, the retailer's COBRA notice was 19 pages long. Because of these alleged deficiencies, not one of the 38,000 former employees chose to elect COBRA continuation coverage.

The former employees sued, seeking appropriate equitable relief, statutory penalties in the amount of \$110.00 per day for each former employee who was sent the retailer's COBRA notice, and attorneys' fees, costs, and expenses.

Denying that it had engaged in any wrongdoing, the retailer agreed to resolve this action through settlement because of the substantial expense of litigation. Specifically, the retailer agreed to deposit a gross settlement amount of \$750,000 into a settlement account. Without taking any additional action, each former employee will automatically receive a net settlement amount of approximately \$9.72. These amounts are consistent with other class action lawsuits in cases involving similar allegations under COBRA.

[Full text of complaint in \*Baja v. Costco Wholesale Corporation\*, 0:21-cv-61210 \(S. D. Fla. Feb. 18, 2022\)](#)

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