

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

DANNY WALKER, individually
and on behalf of all others
similarly situated,

Plaintiff,

v.

Case No.:

SYSCO CORPORATION,

Defendant.

_____ /

CLASS ACTION COMPLAINT

Plaintiff, Danny Walker, (“Plaintiff”), hereby files this Class Action Complaint alleging Defendant, Sysco Corporation (“Sysco” or “Defendant”), violated the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), by failing to provide him with a timely COBRA notice that complies with the law.

BRIEF OVERVIEW

1. Following an employee’s termination, federal law requires plan administrators to notify the former employee of their right to receive continuation coverage. The notice must be sufficient to permit the discharged employee to make an informed decision whether to elect coverage.

2. Despite having access to the Department of Labor’s Model COBRA form, Defendant chose not to use the model form—presumably to save Defendant money by pushing

terminated employees away from electing COBRA.¹

3. The deficient COBRA notice² at issue in this lawsuit, attached as Exhibit “A,” both confused and misled Plaintiff. It also caused Plaintiff economic injuries in the form of lost health insurance and unpaid medical bills, as well as informational injuries.

4. Sysco Corporation, the plan sponsor and plan administrator of the Sysco Corporation Group Benefit Plan (“Plan”), has repeatedly violated ERISA by failing to timely provide participants and beneficiaries in the Plan with adequate notice, as prescribed by COBRA, of their right to continue their health coverage upon the occurrence of a “qualifying event” as defined by the statute.

5. As a result of receiving the deficient COBRA enrollment notice, Plaintiff could not make an informed decision about his health insurance and lost health coverage.

6. Plaintiff suffered a tangible injury refrained from seeking medical treatment as he was uninsured due to Defendant’s deficient COBRA notices.

7. And, not only did Plaintiff lose his insurance coverage, after Plaintiff lost his insurance, he lost the ability to direct his health-care related decisions.

8. Defendant’s deficient COBRA notice also caused Plaintiff an informational injury when Defendant failed to provide him with information to which he was entitled to by statute,

¹ In fact, according to one Congressional research service study, “[The] average claim costs for COBRA beneficiaries exceeded the average claim for an active employee by 53%. The average annual health insurance cost per active employee was \$7,190.00, and the COBRA cost was \$10,988.14. The Spencer & Associates analysts contend that this indicates that the COBRA population is sicker than active-covered employees and that the 2% administrative fee allowed in the law is insufficient to offset the difference in actual claims costs.” Health Insurance Continuation Coverage under COBRA, Congressional Research Service, Janet Kinzer, July 11, 2013.

² Plaintiff only received the Notice attached hereto (Exhibit “A”). Upon information and belief, at some time during the relevant time period, Defendant may have utilized a “dual” COBRA notification process, using a series of communications to notify participants of their COBRA rights. This notice process is also unlawful - participants should not be required to extrapolate critical information from multiple communications to understand their COBRA rights and requirements.

namely a compliant COBRA election notice containing all information required by 29 C.F.R. § 2590.6064(b)(4) and 29 U.S.C. § 1166(a).

9. As a result of these violations, which threaten Class Members' ability to maintain their health coverage, Plaintiff seeks statutory penalties, injunctive relief, attorneys' fees, costs and expenses, and other appropriate relief as set forth herein and provided by law.

JURISDICTION, VENUE, AND PARTIES

10. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1132(e) and (f), and also pursuant to 28 U.S.C. §§ 1331 and 1355.

11. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2). Additionally, ERISA § 502(e)(2) provides that venue is proper "where the plan is administered, where the breach took place, or where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2). Because the breach at issue took place in this District, venue is also proper.

12. Plaintiff is a former employee of Defendant. He was covered under Defendant's Health Plan, making him a participant/beneficiary under the Plan.

13. Plaintiff experienced a qualifying event within the meaning of 29 U.S.C. § 1163(2), rendering him a qualified beneficiary of the Plan pursuant to 29 U.S.C. § 1167(3).

14. Defendant is a foreign corporation but is registered to do business in the State of Tennessee. Defendant employed more than 20 employees who were members of the Plan in each year for the preceding 5 years.

15. Defendant is the Plan sponsor within the meaning of 29 U.S.C. § 1002(16)(B), and the administrator of the Plan within the meaning of 29 U.S.C. § 1002(16)(A). The Plan provides medical benefits to employees and their beneficiaries, and is an employee welfare benefit plan

within the meaning of 29 U.S.C. § 1002(1) and a group health plan within the meaning of 29 U.S.C. § 1167(1).

FACTUAL ALLEGATIONS

COBRA Notice Requirements

16. The COBRA amendments to ERISA included certain provisions relating to continuation of health coverage upon termination of employment or another “qualifying event” as defined by the statute.

17. Among other things, COBRA requires the plan sponsor of each group health plan normally employing more than 20 employees on a typical business day during the preceding year to provide “each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event ... to elect, within the election period, continuation coverage under the plan.” 29 U.S.C. § 1161.

18. Notice is of enormous importance. The COBRA notification requirement exists because employees are not expected to know instinctively of their right to continue their healthcare coverage.

19. Moreover, existing case law makes it ostensibly clear that notice is not only required to be delivered to covered employees but to qualifying beneficiaries, as well.

20. COBRA further requires the administrator of such a group health plan to provide notice to any qualified beneficiary notice of their continuation of coverage rights under COBRA upon the occurrence of a qualifying event within 44 days. 29 U.S.C. § 1166(a)(4). This notice must be “[i]n accordance with the regulations prescribed by the Secretary” of Labor. 29 U.S.C. § 1166(a).

21. To facilitate compliance with notice obligations, the United States Department of Labor (“DOL”) has issued a Model COBRA Continuation Coverage Election Notice (“Model Notice”), which is included in the Appendix to 29 C.F.R. § 2590.606-4. The DOL website states that the DOL “will consider use of the model election notice, appropriately completed, good faith compliance with the election notice content requirements of COBRA.”

22. In the event that a plan administrator declines to use the Model Notice and fails to meet the notice requirements of 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4, the administrator is subject to statutory penalties of up to \$110.00 per participant or beneficiary per day from the date of such failure. 29 U.S.C. § 1132(c)(1). In addition, the Court may order such other relief as it deems proper, including but not limited to injunctive relief pursuant to 29 U.S.C. § 1132(a)(3) and payment of attorneys’ fees and expenses pursuant to 29 U.S.C. § 1132(g)(1). Such is the case here. Defendant failed to use the Model Notice and failed to meet the notice requirements of 29 U.S.C. § 1166 and 29 C.F.R. § 2590.606-4, as set forth below.

PLAINTIFF DANNY WALKER

23. Plaintiff, Danny Walker is a former employee of Defendant and participant in Defendant’s health plan.

24. Plaintiff began working for Defendant on July 30, 2018. Plaintiff was abruptly terminated on November 22, 2018. Plaintiff was not fired for gross misconduct.

25. As a result of his termination, Plaintiff experienced a qualifying event as defined by 29 U.S.C. § 1163(2).

26. The notice Defendant sent Plaintiff violates the law. Among other things:

- a. Defendant’s COBRA form violates 29 C.F.R. § 2590.606-4(b)(4)(i) because it fails to include name of the plan under which continuation coverage is available;

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