



PAYROLL CURRENTLY

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Company Ordered to Pay \$85,000 for Canceling Health Insurance After Employee Took FMLA Leave

When Kathleen Ryl-Kuchar became pregnant with triplets in 2003, she was compensated as a full-time employee working a regular 40-hour workweek by Care Centers, Inc. When Ryl-Kuchar began working from home in May 2003 because of the pregnancy, she worked less than 35 hours per week. Ryl-Kuchar's certification form for leave under the Family and Medical Leave Act (FMLA) indicated that she was incapacitated "from May 11th until two months post-delivery" but did not specify when her leave would begin. After giving birth, Ryl-Kuchar stopped working in August and left the company on October 1.

In November 2003, Care Centers cancelled Ryl-Kuchar's health insurance retroactive to June 15, 2003, without notifying her. The cancellation left Ryl-Kuchar with unpaid medical bills from her pregnancy after June 15, and she sued for interference with her rights under the FMLA. A jury awarded Ryl-Kuchar \$31,621.08 as compensation for her unpaid medical bills. The court awarded her an additional \$11,105.59 in prejudgment interest plus \$42,726.67 in liquidated damages [*Ryl-Kuchar v. Care Centers, Inc.*, 564 F. Supp.2d 817 (ND Ill., 6-16-08)].

Interference with FMLA rights

The decision to terminate insurance. The decision to cancel Ryl-Kuchar's insurance was made by CCS Employee Benefits VEBA, Inc., which administered the company's health program. The cancellation process began when the VEBA trustee audited Ryl-Kuchar's timesheets. The trustee concluded that Ryl-Kuchar had ceased to be a full-time employee in June 2003, and therefore became ineligible for health insurance at that time. However, Care Centers did not independently audit Ryl-Kuchar's timesheets to verify her eligibility for health insurance, so the court said it was reasonable to conclude that by terminating Ryl-Kuchar's health insurance the company adopted VEBA's decision as its own.

The period of FMLA leave. The jury concluded that Ryl-Kuchar's FMLA leave began on July 28 and continued until her resignation on October 1. The company was on notice that Ryl-Kuchar was on FMLA leave because the VEBA trustee saw a picture of the triplets and suspected that Ryl-Kuchar was on leave to care for her newborn children – an event entitling an employee to FMLA protection.

While she was on FMLA leave, Ryl-Kuchar had accrued health insurance through July 27 and was eligible for continuation coverage after that date. Although she worked less than 35 hours per week from June 15 through July 27, the company never notified her of a status change, and her paystubs continued to reflect that she was a full-time employee and show deductions from her pay for health insurance. The company never formally changed Ryl-Kuchar's status from full-time to part-time. The retroactive cancellation of Ryl-Kuchar's health insurance leave as of June 15 was therefore unlawful interference with her FMLA rights.



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The amount of damages. The court rejected Care Centers' argument that Ryl-Kuchar's damages should be limited to the amount she would have had to pay in insurance premiums if she had elected COBRA continuation coverage. The company did not notify Ryl-Kuchar when it retroactively cancelled her health insurance. A COBRA termination notice was sent out, but the delivery address had a typographical error and Ryl-Kuchar did not receive it. As far as Ryl-Kuchar knew, she still had health insurance coverage because her paystubs showed insurance premium deductions and she never received any notice otherwise.

Interest

An employer that violates the FMLA is required to pay interest "calculated at the prevailing rate" on the amount of lost wages or employment benefits suffered by an employee as a result of the violation (29 USC §2617(a)(1)(A)(ii)). Here, the court said Ryl-Kuchar's computation of interest – using daily prime rates and compounding the amounts monthly – was reasonable. And because Ryl-Kuchar's insurance losses dated from June 15, 2003, it was appropriate to calculate the interest owed beginning on that date.

Liquidated damages

The court awarded liquidated damages equal to the damage suffered by Ryl-Kuchar (i.e., the jury award plus interest) because Care Centers did not act in good faith and did not have reasonable grounds to believe that its conduct did not violate the FLMA. The company did not act in good faith because it cancelled Ryl-Kuchar's health insurance retroactively and did not contact her directly about the cancellation. "A reasonable employer attempting to determine whether termination of an employee's group health insurance would violate the FMLA would have contacted the employee before canceling the employee's insurance."