

COBRA Tips®

A Publication of OnQue Technologies, Inc.

Postal Worker Says Certificate of Mailing Won't Hold Up in Court

April 29, 2006

By Scott Haines, [OnQue Technologies, Inc.](#)

The following is an excerpt from [Questions and Answers from the COBRA Help Desk—Part III](#):

Employer: When I took an event mailing to the post office, I was told by the postal worker that a “Certificate of Mailing” would not hold up in court. The clerk went on to say that we should use “Certified Mail” without a return receipt. He said that with certified mail you can go on line and use the tracking number to see who signed for the mail item. Obviously, I would like to use proof of mailing that will stand up in court. Can you advise me?

OnQue: The federal courts have ruled that a notice mailed via first-class mail is presumed to have been properly delivered. The challenge to the administrator is in proving that the notice was mailed in the first place. That is where the Certificate of Mailing comes in—when this method is used, it is presumed that the document was delivered, while the certificate proves when and to whom it was mailed.

However, Certified Mail may or may not provide evidence of delivery. The primary problem with that method is that someone must sign for the delivery. Consider the possibilities:

Imagine that a former employee claims he did not elect COBRA coverage because he did not receive a qualifying event notice. The postal service records indicate that a house guest, not the former employee, accepted delivery. Was the notice properly delivered to the recipient? It is possible the question would be left to a federal judge to decide. Why take that risk?

Next, consider what you must do when the notice is returned because no one was available to sign for it. First, you must invest more time and money in this process, because you are still obligated to deliver the notice. And because the delivery deadline has not changed, your risk of being out of compliance is increasing because your timeframe for delivery is shrinking. The Certificate of Mailing, on the other hand, leaves no room for argument by the qualified beneficiary, because it proves that the notice was delivered via first-class mail.

Visit the USPS website to learn more about [Certificate of Mailing](#) and [Certified Mail](#).

Related COBRA Tip

- [Are You Using The Safest Method To Deliver COBRA Notices?](#)