

COBRA Basics – What Is a COBRA Qualifying Event?

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COBRA (the Consolidated Omnibus Budget Reconciliation Act) requires covered employers to offer continued health plan coverage to qualified beneficiaries when they experience a COBRA “qualifying event.”

Federal COBRA applies to employers with 20 or more employees in the preceding calendar year, but not to government or church plans. Federal COBRA continuation requirements apply more broadly than just to the major medical plan. Any employer-sponsored plans considered to be group health plans because they provide significant medical care are subject to COBRA. This would include plans such as the following: major medical, prescription drug coverage, health FSA (some special rules may apply depending upon whether the account is overspent or underspent), and HRA.

This issue brief discusses which events are considered “qualifying events.” This brief will also identify events that are commonly misclassified as qualifying events but that do not entitle an individual to continued coverage.

Triggering Events

A loss of coverage caused by an event not listed as a triggering event will not result in a right to continuation coverage under COBRA. This includes events such as a change in plan eligibility rules, failure to pay plan premiums, or an employee’s decision to voluntarily drop coverage.

A qualified beneficiary will be entitled to continued health plan coverage under federal COBRA only if they have experienced one of the seven triggering events listed in the statute, and if that triggering event causes a loss of eligibility for health coverage. The statutory COBRA triggering events are:ⁱ

- The death of the covered employee.
- The termination (other than by reason of such employee’s gross misconduct), or reduction of hours, of the covered employee’s employment.
- The divorce or legal separation of the covered employee from the employee’s spouse.
- The covered employee becoming entitled to benefits under title XVIII of the Social Security Act.
- A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.
- A proceeding in a case under title 11, United States Code (bankruptcy), commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

Experiencing one of the seven triggering events listed above is not, on its own, enough for an individual to be entitled to continuation coverage under COBRA. The triggering event must have caused a loss of eligibility for coverage under the health plan for there to be a qualifying event entitling an individual to continuation coverage.

Several of the events listed above often lead to confusion among employer plan sponsors about whether a qualifying event has occurred. In some cases, the events listed above do not actually lead to ineligibility of the individual for the plan. In other cases, an event very similar to one of the triggering events is the actual cause of the loss of eligibility. We will discuss these common areas of confusion below.

Termination or Reduction of Hours of the Covered Employee's Employment

When an employee's employment is terminated, or their hours drop below the full-time eligibility requirement, they will most likely lose eligibility for active coverage. When this is the case, the termination/reduction of hours is a qualifying event for the employee and for any spouse or dependents who were covered the day before the qualifying event. However, there are certain scenarios in which a termination or reduction of hours is not a qualifying event.

Gross Misconduct

The COBRA statute explicitly states that termination of an employee's employment is considered a qualifying event only when the termination occurred for some reason other than the employee's gross misconduct. Therefore, if an employee is terminated for gross misconduct, the employer may be able to successfully forgo offering continuation coverage under COBRA to any of the individuals who would otherwise be considered qualified beneficiaries.

The problem with forgoing an offer of continuation coverage due to termination for gross misconduct is that the COBRA statute contains no definition of "gross misconduct." This has been a highly litigated area of the law, and no clear standard or definition has been established in the courts. For this reason, if an employer is considering forgoing an offer of continuation coverage due to gross misconduct, it is highly recommended that the employer first discusses the situation with an attorney.

Reduction of Hours During Employee Stability Period

An individual experiences a qualifying event only if a triggering event listed in the statute causes a loss of eligibility for coverage under the employer's group health plan. For that reason, if an employer is using the look-back measurement method under the ACA to determine full-time eligibility, an employee's reduction of hours may not actually cause a loss of eligibility for the plan. This is the case because when an employee qualifies for a stability period due to measuring full time during the associated measurement period, that employee will maintain full-time status and eligibility for benefits for the duration of the stability period, even if their hours drop below full time during the stability period.

The Section 125 regulations do permit an employee to voluntarily drop coverage in this scenario if they will be enrolling in other coverage. However, since an employee in this scenario would not be losing eligibility for coverage, this would not be a qualifying event for the covered employee or for their covered spouse and dependents.

FMLA

When an individual reduces hours pursuant to an FMLA protected leave, they will not lose eligibility for coverage since FMLA protects health plan eligibility during leave. However, if the individual does not return to full-time status at the end of their FMLA protection, they will experience a qualifying event. This is the case even if the person's coverage lapsed during FMLA leave due to nonpayment of premiums.

Divorce or Legal Separation of the Covered Employee from the Employee's Spouse

Most employer plans do not cover ex-spouses as eligible dependents. Therefore, when a covered employee's spouse and the covered employee divorce, the covered employee's ex-spouse will lose eligibility for coverage under the plan. When this occurs, the ex-spouse has experienced a qualifying event.

Often a court order requiring the employee to provide coverage for an ex-spouse may accompany a divorce decree. A court order such as this does not require the employer to continue to provide coverage to the ex-spouse in the same way as to a spouse. However, it may require the employee to pay for the ex-spouse's COBRA coverage or to find coverage elsewhere for the ex-spouse.

Domestic Partnerships

In certain cases, employer plan sponsors choose to permit domestic partners to be eligible for coverage under the group health plan. When a domestic partner relationship ends, the former domestic partner will lose eligibility for coverage under the group health plan. However, federal COBRA does not provide continuation coverage for domestic partners. Termination of a domestic partner relationship is not a qualifying event. (But note that state insurance regulations may provide additional protections for domestic partner relationships that are not provided by federal COBRA.)

A domestic partner cannot be a qualified beneficiary; in other words, a domestic partner does not have an independent right to elect COBRA. However, an employee who experiences a qualifying event could elect continuation coverage for a domestic partner who was covered the day before the employee experienced the qualifying event.

Legal Separation

Legal separation is a qualifying event. However, COBRA does not provide a definition of legal separation. Only one court has addressed this issue, and it decided that a legal separation has occurred only when there has been a final court decree adjudicating the parties' legal rights and obligations. Therefore, a married couple's decision to begin divorce proceedings is probably not enough to be considered a legal separation. And when legal separation does occur, it will not cause a loss of plan coverage under many health plans; therefore, it will not necessarily be a qualifying event.

Anticipation of Divorce

Under COBRA, if an employee terminates a spouse's coverage "in anticipation" of a divorce, the spouse could still be considered a qualified beneficiary when the divorce is finalized. If, after reviewing all the facts and the circumstances of the event, the employer believes that an employee has dropped a spouse in anticipation of a divorce, COBRA should be offered effective the date the divorce is finalized. For example, if an employee drops a spouse during open enrollment and then a divorce becomes effective a few months later, this is good evidence that the spouse was dropped in anticipation of the divorce. Admittedly, employer plan sponsors are often not informed of a divorce. However, if they do become aware, they should do their best to determine whether the individual would be a qualified beneficiary due to this rule.

The Covered Employee Becoming Entitled to Medicare

Medicare Secondary Payer rules prohibit employers with 20 or more employees from terminating an employee's eligibility for coverage due to the employee's age-based Medicare entitlement, and they prohibit employers with 100 or more employees from terminating an employee's eligibility for coverage due to the employee's disability-based Medicare entitlement. The rules also prohibit employers of all sizes from terminating an employee's eligibility for coverage due to eligibility for or entitlement to Medicare resulting from end-stage renal disease (ESRD). Therefore, the employee's Medicare entitlement will rarely be a qualifying event. When it is a qualifying event, for example because the employer is small enough to be exempt from the Medicare Secondary Payer Rules, it will be a qualifying event for the covered spouse and dependents only.

Employee Voluntarily Terminates Coverage Due to Medicare Entitlement

A covered employee's becoming entitled to Medicare and voluntarily terminating coverage with the employer (as is permitted under the Section 125 regulations) is not a qualifying event for the covered spouse and dependents. A qualifying event has occurred only when there is a loss of eligibility for coverage. In other words, if there is a desire to continue coverage for the spouse, in most cases the employee would have to remain enrolled in the group health plan as well. For example, the employee could choose to have double coverage under the group health plan and Medicare for a period.

Summary

The first step in determining whether an individual is entitled to continuation under COBRA is discerning whether the individual experienced one of the seven listed triggering events. The next step is determining whether that event caused the individual to lose eligibility for coverage under the employer's health plan. In some cases, although an individual has experienced one of the seven triggering events, that person may not have lost eligibility for coverage. In other cases, an event other than one of the seven triggering events was the cause of the person's loss of eligibility. In these cases, the person is not eligible for continuation under COBRA.

It is important for an employer to discern whether an individual has in fact experienced a qualifying event to ensure that an election notice is provided on a timely basis and to avoid issues with carrier coverage or an inadvertent extension of the maximum coverage period.

Further, although it is permissible for employers to offer continuation coverage even when a person has not experienced a qualifying event, this choice does not come without risk to the employer. In these situations, the employer is often putting themselves at risk of having to cover any claims made by the covered individual, because the insurance (or stop-loss carrier in the case of a self-insured employer) carrier may not agree to cover claims for technically ineligible individuals.

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ⁱ <https://www.govinfo.gov/content/pkg/USCODE-2011-title29/html/USCODE-2011-title29-chap18.htm>