

## Practitioner Insights

# An employee becomes eligible for COBRA health benefits or state continuation benefits upon the occurrence of a qualifying event defined by federal or state law

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## Overview

A covered employee and the employee's spouse and dependents who experience a qualifying event may receive continuation coverage of the employee's group health benefits under federal COBRA or Florida state continuation legislation. A qualifying event under both federal COBRA and Florida continuation coverage includes the loss of health coverage as the result of the death of the covered employee, the termination or reduction of hours of the covered employment, the divorce or legal separation of the covered employee from the employee's spouse, the covered employee becoming entitled to Medicare health benefits, a dependent child ceasing to be a dependent child under the plan's requirements, or a Chapter 11 bankruptcy proceeding involving an employer providing health coverage to a retiree and the retiree's spouse or dependents.

Qualified beneficiaries not otherwise eligible for federal COBRA who experience a qualifying event may be eligible to elect to receive continuation coverage under Florida law. See [State Aspects](#).

- [Geissal v. Moore Med. Corp.](#), 524 U.S. 74, 118 S. Ct. 1869, 141 L. Ed. 2d 64 (1998)
- [Wright v. Hanna Steel Corp.](#), 270 F.3d 1336, 1339 (11th Cir. 2001)
- [Kobold v. Aetna U.S. Healthcare, Inc.](#), 258 F. Supp. 2d 1317, 1324 (M.D. Fla. 2003)
- [Cabral v. Olsten Corp.](#), 843 F. Supp. 701, 702 (M.D. Fla. 1994)
- [Addison v. Am. Med. Sec.](#), CL 00-01445 AB, 2002 WL 1454102 (Fla. Cir. Ct. 2002)
- [29 U.S.C.A. § 1163](#)
- [§ 627.6692, Fla. Stat. Ann.](#)

## Detailed Explanation

## Federal Aspects

### **COBRA Requires Continuation Coverage of Employee Benefits Following Certain Qualifying Events**

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amended the Employee Retirement Income Security Act of 1974 (ERISA) to permit a participant in an employer's group health plan to elect continuing coverage when he might otherwise lose that benefit because of a qualifying event. [Swint v. Protective Life Ins. Co.](#), 779 F. Supp. 532, 552 (S.D. Ala. 1991).

If a group health plan is subject to COBRA, the plan sponsor must provide a qualified beneficiary who would lose coverage as the result of a qualifying event the opportunity to elect continuation coverage under the plan. 29 U.S.C.A. § 1161(a); [Kobold v. Aetna U.S. Healthcare, Inc.](#), 258 F. Supp. 2d 1317, 1324 (M.D. Fla. 2003).

- [Construction and application of ERISA provisions governing continuation coverage under group health plans \(29 U.S.C.A. §§ 1161 et seq.\)](#), 126 A.L.R. Fed. 97 (Originally published in 1995)
- [Corp Couns Gd to COBRA § 18:2 Eligibility issues](#)
- [4 Compensation and Benefits § 55:146 Sample COBRA notice of qualifying event](#)
- [Employee Fringe & Welfare Benefit Plans Appendix O \(2012 ed.\) COBRA Notice](#)

### **COBRA Applies Only to Employers with More than 20 Employees**

Employers with fewer than 20 employees are not required to offer such continuation coverage under federal law. 29 U.S.C.A. § 1161(b); [Geissal v. Moore Med. Corp.](#), 524 U.S. 74, 80, 118 S. Ct. 1869, 1873, 141 L. Ed. 2d 64 (1998).

### **Continuation Coverage Must Be Identical to Coverage Provided to Similarly Situated Beneficiaries**

Generally, continuation coverage must be identical to the coverage provided under the plan to similarly situated beneficiaries who did not experience a qualifying event. 29 U.S.C.A. § 1162(1); [Wright v. Hanna Steel Corp.](#), 270 F.3d 1336, 1339 (11th Cir. 2001).

### **A Qualified Beneficiary May Be a Covered Employee or a Qualified Beneficiary**

A covered employee is an individual who is or was provided coverage under a group health plan by virtue of the performance of services by the individual for one or more persons maintaining the plan. 29 U.S.C.A. § 1167(2); [Kobold v. Aetna U.S. Healthcare, Inc.](#), 258 F. Supp. 2d 1317, 1324 (M.D. Fla. 2003). A qualified beneficiary includes the spouse or dependent child of the covered employee who was receiving coverage under the plan, including a child born to or placed for adoption with the covered employee during the period of continuation coverage under COBRA. 29 U.S.C.A. § 1167(3)(A); [Wright v. Hanna Steel Corp.](#), 270 F.3d 1336, 1339 (11th Cir. 2001).

### **Events Occurring During a Plan's Exception from COBRA Are Not Qualifying Events**

Federal regulations provide that an event will not be a qualifying event for COBRA continuation coverage purposes if it occurs before a health plan is subject to COBRA. 26 C.F.R. § 54.4980B-4(d). Furthermore, federal regulations provide that this is true even if the plan later becomes subject to COBRA, and the plan is not required to make coverage available to anyone whose coverage ends as a result of an event during a year when the plan is excepted from COBRA. 26 C.F.R. § 54.4980B-4(d). However, if coverage is offered beyond the employee's termination date, which extends into the period when the plan becomes subject to COBRA, and another qualifying event, such as a divorce, occurs before that extended

coverage is lost, then a qualified beneficiary may be entitled to elect COBRA continuation coverage under the applicable federal regulations. [26 C.F.R. § 54.4980B-4\(d\)](#).

#### **Death Is Included as a Qualifying Event**

A qualifying event includes the death of the covered employee, if such death would result in the loss of coverage for a qualified beneficiary except for the continuation coverage required by COBRA. [29 U.S.C.A. § 1163\(1\)](#); [Geissal v. Moore Med. Corp.](#), 524 U.S. 74, 80, 118 S. Ct. 1869, 1873, 141 L. Ed. 2d 64 (1998).

#### **Termination or Reduction of Hours Are Included as Qualifying Events Except in Cases of Gross Misconduct**

A qualifying event includes the termination or reduction of hours of the covered employee's employment, if such termination or reduction in hours would result in the loss of coverage for a qualified beneficiary except for the continuation coverage required by COBRA. [29 U.S.C.A. § 1163\(2\)](#); [Cummings v. Washington Mut.](#), 650 F.3d 1386, 1391 (11th Cir. 2011). Termination due to gross misconduct is not a qualifying event for purposes of COBRA continuation coverage. [29 U.S.C.A. § 1163\(2\)](#); [Wright v. Hanna Steel Corp.](#), 270 F.3d 1336, 1343 (11th Cir. 2001); [Cabral v. Olsten Corp.](#), 843 F. Supp. 701, 702 (M.D. Fla. 1994).

#### **Gross Misconduct Is Not Defined By COBRA Law; Court May Look to Unemployment Definition of Misconduct**

Neither the Eleventh Circuit nor any of its district courts have addressed the issue of what constitutes gross misconduct for COBRA purposes. Illinois and California federal district courts have stated that gross misconduct is not defined by statute for purposes of COBRA continuation coverage, but courts may look to unemployment insurance cases, as unemployment insurance is analogous in its functions to those of COBRA. [Burke v. Am. Stores Employee Ben. Plan](#), 818 F. Supp. 1131, 1135 (N.D. Ill. 1993); [Paris v. F. Korbel & Bros., Inc.](#) (N.D. Cal. 1990) 751 F.Supp. 834, 838.

In Florida, an individual will be disqualified from unemployment due to misconduct if the employee's action is willful, wanton, or deliberate. [City of Largo v. Rodriguez](#), 884 So. 2d 121, 123 (Fla. 2d DCA 2004). A Florida federal district court has found that failure to attend two mandatory meetings, an unsolicited offer of employment, and problem mileage reports did not rise to the level of gross misconduct. [Cabral v. Olsten Corp.](#), 843 F. Supp. 701, 704 (M.D. Fla. 1994).

- Memorandum of Law in Support of Plaintiff' Motion for Preliminary Injunction, [Terry E. TRIMMER, and Kay S. Trimmer, Plaintiffs, v. NEMSCHOFF CHAIRS, INC., a foreign corporation, ID/KT, LLC, a foreign corporation, and Health Furnishing Solutions, LLC, a foreign corporation, Defendants.](#), 2005 WL 452498 (M.D.Fla.)

#### **Termination of Employment May Not Be a Qualifying Event If No Loss of Coverage Occurs**

While the Eleventh Circuit has not ruled on this matter, a Georgia federal district court within the Eleventh Circuit determined that a former employee who did not lose group coverage until 30 months after the employee's termination date was not entitled to notice of additional COBRA rights as the qualifying event of termination of employment did not cause the loss of coverage. [Karp v. Guardian Life Ins. Co. of Am.](#), 456 F. Supp. 2d 1375, 1381 (S.D. Ga. 2006).

#### **Divorce or Legal Separation Is a Qualifying Event**

A qualifying event includes the divorce or legal separation of the covered employee, if such divorce or legal separation would result in the loss of coverage for a qualified beneficiary except for the continuation coverage required by COBRA. [29 U.S.C.A. § 1163\(3\)](#); [Geissal v. Moore Med. Corp.](#), 524 U.S. 74, 80 (1998).

**Medicare Entitlement Is a Qualifying Event**

Federal law provides that a qualifying event includes the entitlement to Medicare, if such Medicare entitlement would result in the loss of coverage for a qualified beneficiary except for the continuation coverage required by COBRA. [29 U.S.C.A. § 1163\(4\)](#). While the Eleventh Circuit has not ruled on this issue, a Georgia federal district court within the Eleventh Circuit determined that the qualifying event of Medicare entitlement by a covered employee only triggered COBRA eligibility for a spouse or dependent and not for the covered employee. [Karp v. Guardian Life Ins. Co. of Am., 456 F. Supp. 2d 1375, 1382 \(S.D. Ga. 2006\)](#).

**Loss of Dependent Status Is a Qualifying Event**

Federal law provides that a qualifying event includes the loss of dependent child status by a qualified beneficiary of a covered employee, if such loss of dependent child status would result in the loss of coverage for a qualified beneficiary except for the continuation coverage required by COBRA. [29 U.S.C.A. § 1163\(5\)](#).

**Dependent Status Must Continue Until Age 26**

Under the Patient Protection and Affordable Care Act, a group health plan offering group or individual health insurance coverage that provides dependent coverage of children must continue to make such coverage available for an adult child until the child turns 26 years of age. [42 U.S.C.A. § 300gg-14\(a\)](#); [Florida ex rel. Atty. Gen. v. U.S. Dept. of Health & Human Services, 648 F.3d 1235, 1252 \(11th Cir. 2011\)](#) (rev'd in part on other grounds, [Nat'l Fed'n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566 \(U.S. 2012\)](#)).

**Bankruptcy of an Employer Is a Qualifying Event for Certain Retirees**

Federal law provides that a qualifying event for COBRA continuation coverage purposes occurs if there is a Chapter 11 bankruptcy case by an employer commencing on or after July 1, 1986, resulting in a loss of coverage, which includes a substantial elimination of coverage with respect to a qualified beneficiary. [29 U.S.C.A. § 1163\(6\)](#). A qualified beneficiary under this federal provision includes a covered employee who retired on or before the date of the substantial elimination of coverage, and any other individual who, on the day before the qualifying event, is a spouse, dependent child, or surviving spouse of the covered employee. [29 U.S.C.A. § 1167\(3\)\(C\)](#). Furthermore, federal law provides that the substantial elimination of coverage must occur within one year before or after the date of commencement of the bankruptcy proceeding. [29 U.S.C.A. § 1163](#).

**State Aspects****State Continuation Coverage May Be Provided to Qualified Beneficiaries Who Have a Qualifying Event While Covered By a Small Employer Plan Not Otherwise Eligible for Federal COBRA**

A group health plan issued to a small employer must provide that each qualified beneficiary who would lose coverage under the group health plan because of a qualifying event is entitled, without evidence of insurability, to elect, within the election period provided in this section, continuation coverage under the employer's group health plan. [§ 627.6692\(5\)\(a\), Fla. Stat. Ann](#); [Addison v. Am. Med. Sec., CL 00-01445 AB, 2002 WL 1454102 \(Fla. Cir. Ct. 2002\)](#). Furthermore, state law provides that a qualified beneficiary who elects continuation coverage is subject to all the terms and conditions applicable under the group health plan. [§ 627.6692\(5\)\(a\), Fla. Stat. Ann](#). This law does not apply if continuation of coverage benefits is available to covered employees or other qualified beneficiaries pursuant to federal COBRA benefits. [§ 627.6692\(2\), Fla. Stat. Ann](#).

- DON'T GET TANGLED IN THE COBRA COIL, 11 No. 7 Fla. Emp. L. Letter 3

- Gregory A. Richards, Jr. & Philip S. Wartenberg, Health Insurance and Other Health-Related Expenses in Family Law: An Overview, Fla. B.J., 4/98, at 65, 68
- [PRINCIPAL LIFE INSURANCE COMPANY, Plaintiff, v. Stephen CUTLER and Sue Ellen Cutler, individually and as natural parents and guardians of Addison Beach Cutler, and Cutler Construction Company, Defendants., 2010 WL 3561082 \(M.D.Fla.\)](#)

### **There Are Various Qualifying Events for Continuation Coverage Under State Law**

Under Florida state law, a qualifying event for state health continuation coverage purposes means, with respect to any covered employee, any of the following events which, but for the election of continuation coverage, would result in a loss of coverage to a qualified beneficiary:

- The death of the covered employee.
- The termination or reduction of hours of the covered employee's employment, except that termination of an employee for gross misconduct does not constitute a qualifying event.
- The divorce or legal separation of the covered employee from the covered employee's spouse.
- A covered employee's becoming entitled to benefits under either part A or part B of Medicare.
- A dependent child's ceasing to be a dependent child under the generally applicable requirements of the group health plan.
- A retiree or the spouse or child of a retiree losing coverage within 1 year before or after commencement of a Chapter 11 bankruptcy proceeding by the employer from whose employment the covered employee retired. [§ 627.6692\(4\)\(g\), Fla. Stat. Ann.](#)

### **A Qualified Beneficiary Is Defined**

A qualified beneficiary under state law means any individual who, on the day before the qualifying event for the covered employee, is a beneficiary under the group health plan by virtue of the individual being a covered employee (except if the employee is terminated for gross misconduct), the dependent spouse of the covered employee, and the dependent child of the covered employee. [§ 627.6692\(4\)\(f\), Fla. Stat. Ann.](#)

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