

# COBRA Tips®

A Publication of OnQue Technologies, Inc.

## Employee Living in Car Arrested; Fails to Return to Work

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

**Employer:** We had an employee who was enrolled in our company health plan. About two weeks ago, the police came in and arrested her for theft (not from our company) and she was taken out in handcuffs. We have not heard from her and assume she is in jail. We want to terminate her employment, but I don't know how to proceed. Here are my questions:

If we terminate her employment due to gross misconduct, is she entitled to COBRA? If so, what do I do about sending her the COBRA notifications? The address I have on file is apparently invalid—I just learned that she was living in her car right before her arrest. I know this sounds weird, but it's true, and I need to know what to do.

**OnQue:** It is true that COBRA need not be offered to an employee who is terminated due to gross misconduct. However, denials of continuation coverage on such grounds have been successfully challenged in the courts. At the heart of the matter is whether your company has a clearly defined policy that enumerates the acts that constitute gross misconduct, and whether you can demonstrate that the employee was aware of that policy. Because denial of her right to continued health coverage is a potentially dangerous matter for your company, I urge you to consult with an attorney before taking such action.

If you process this case as an involuntary termination of employment (not due to gross misconduct), then you must make every reasonable attempt to deliver the COBRA qualifying event and election notice to the former employee. According to the law, the notice must be provided in a "good faith manner that is reasonably calculated to ensure actual receipt of the material." In this case, acting in "good faith" may mean sending the notice more than once. Following are a few pointers:

- It is a mistake to assume that a notice delivered to the former employee's last known address will not reach her; she may be retrieving her mail from that location or perhaps it is being forwarded to another location that is accessible to her. It would be wise to begin by sending the notice to the address you have on file as soon as possible.
- Contact the appropriate authorities to determine if they can provide you with her current mailing address.
- Ask her coworkers if they know where she currently resides or how she receives mail if she is still homeless.
- Protect your company (and yourself) by carefully documenting all of your efforts to identify her place of residence and to deliver the COBRA notice in a timely manner.

It is also good practice to send the notice via U.S. Postal Service first-class mail with a Certificate of Mailing; the certificate proves when and to whom the notice was mailed.

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## Related COBRA Tips

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