

COBRA Tips®

A Publication of OnQue Technologies, Inc.

Anticipating Legal Separation (What's Legal About It?)

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: I have an employee who has asked for his wife to be taken off the health insurance. They are separating but it is not legal yet. Am I correct in my understanding that the wife can elect COBRA coverage once the separation is finalized?

OnQue: Yes. Following are some key points to keep in mind in such cases:

- For the separation of marriage partners to be recognized as a qualifying event, it must result in a loss of coverage, which typically does not occur until the separation is sanctioned by the state. This means that the couple must first receive a judgment of separation from a state court—living separate and apart does not constitute legal separation until a state court makes it so. Then, the administrator can terminate dependent coverage if such action is required under the plan rules.
- Some states, such as Louisiana, do not recognize the separation of marriage partners as a legal matter. Simply living separate and apart in those states is not a qualifying event, because such separation generally does not result in a loss of coverage to the employee's dependents.
- Employees planning to separate or divorce often terminate dependent coverage before receiving a judgment from the court. COBRA regulations resolve the problem by providing that a qualifying event will occur on the date of the judgment, even though the dependents were not covered at that time.

For more information on this issue, see [What Happens When a Spouse is Dropped From the Plan in Anticipation of Divorce?](#) on the COBRA Tips page at www.onque.com.