

COBRA Tips™

A Publication of OnQue Technologies, Inc.

Questions and Answers from the COBRA Help Desk, Part II

Frequently (and Not-So-Frequently) Asked Questions

By Scott Haines, President

[OnQue Technologies, Inc.](#)

Every month we respond to numerous COBRA questions posed by our broker and employer customers. The questions we field cover a broad range of topics, from the commonplace to the obscure, and our responses run the gamut as well—from the simple and straightforward to the complex and cautionary. This tip is the second in a series of articles in which we offer a smattering of the more interesting and informative COBRA questions and answers:

- Employee Living in Car Arrested; Fails to Return to Work
- Employer Believes Qualifying Event Notice Must Be Delivered in 14 Days
- Former Spouse Claims Entitlement to 36 Months; Broker and Carrier Disagree
- Post Office Cannot Deliver Notice

Employee Living in Car Arrested; Fails to Return to Work

Employer: We had an employee who was in 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

COBRA Tips™

A Publication of OnQue Technologies, Inc.

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. For more detailed information about COBRA notice delivery obligations and methods, see our COBRA Tip, [Are You Using the Safest Method to Deliver COBRA Notices?](#)

Employer Believes Qualifying Event Notice Must Be Delivered in 14 Days

Employer: When the employer is also the plan administrator, how many days are allowed to provide the qualifying event notice? Your software [COBRA OnQue] says 44 days, but I was told we have only 14 days to deliver the notice. Please explain.

OnQue: In 1995, the Department of Labor (DOL) issued an opinion letter in which it concluded that an employer/plan administrator has 44 days in which to notify a qualified beneficiary of his or her rights and obligations -- 30 days as the employer plus 14 days as the plan administrator. While most COBRA experts and courts agreed with that opinion, some did not; at least one court ruled against an employer that failed to send a qualifying event notice within 14 days. However, on May 26, 2004, the DOL gave teeth to their 1995 opinion by including it in the final rules regarding health care continuation coverage. Following is an excerpt from the DOL publication:

From Sec. 2590.606-4. Notice requirements for plan administrators, paragraph b(2): In the case of a plan with respect to which an employer of a covered employee is also the administrator of the plan, except as provided in paragraph (b)(3) of this section, if the employer is otherwise required to furnish a notice of a qualifying event to an administrator pursuant to Sec. 2590.606-2, the administrator shall furnish to each qualified beneficiary a notice meeting the requirements of paragraph (b)(4) of this section not later than 44 days....

Ex-spouse Claims Entitlement to 36 Months; Broker and Carrier Disagree

Broker: An employee left a client company and she and her husband went on COBRA for 18 months. Three months later, she joined her new employer's plan and her husband stayed on COBRA. In May of 2005 they divorced. At the end of August 2005, the ex-husband's 18-month COBRA period expired. The ex-husband maintains that he is entitled to another 18 months of continuation due to the divorce. But the divorce caused no loss of coverage - the end of the continuation period did, and therefore I feel that he is not entitled to any additional continuation, either from the divorce or from the end of the continuation period. The employer agrees with me, as does the insurance carrier involved. However, the ex-husband's attorney says that he is entitled to additional coverage. Who is right?

COBRA Tips™

A Publication of OnQue Technologies, Inc.

OnQue: Whether the former spouse in this case is entitled to the 18-month extension depends upon the following:

- The divorce must have occurred before the qualified beneficiary's original 18-month coverage period expired. That requirement appears to be satisfied in this case.
- The qualified beneficiary must have notified the plan of the divorce within 60 days of the divorce decree date, provided the plan properly disclosed the notice requirement to the qualified beneficiary in its Summary Plan Description and in the initial Qualifying Event Notice. Otherwise, the 60-day notice requirement is not enforceable.

I assume from your description of the case that the plan administrator did not learn of the divorce within the 60-day notice period. If that assumption is valid and if the plan administrator can verify that the former spouse was properly informed of the notification requirement, then he is not entitled to the extension.

I would urge your client to obtain legal advice before taking any action. Because the denial of COBRA continuation coverage is a serious matter, verification that the employer has met its disclosure obligations is critical. On the other hand, offering such coverage when not required by law sets a dangerous precedent, because in so doing the plan administrator is making an exception to the 60-day notification requirement. That decision could result in an obligation to provide the same extension of the notification period to all individuals who experience a second qualifying event. Also, the insurers would have to agree to provide extended coverage under such circumstances.

Post Office Cannot Deliver Notice

Employer: What should I do when a COBRA notice is returned marked No Mail Receptacle?

OnQue: 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." This means that it is very important that you take all "reasonable" steps necessary to deliver the notice and that you carefully document your actions.

The United States Postal Service endorsement, No Mail Receptacle, indicates that the individual's address is correct, but he or she failed to provide a receptacle for receipt of mail. I suggest you contact the individual by phone to determine the best method of delivery to his or her residence. If that fails, consider sending the notice via courier or by any other means likely to ensure delivery of the notice. Also, consider contacting the postal service to discuss alternative methods that ensure delivery. Again, be sure to carefully document every action you take in your attempt to deliver the materials.

COBRA Tips™

A Publication of OnQue Technologies, Inc.

Related COBRA Tips

- [The Gross Misconduct Exception](#)
- [Are You Using The Safest Method To Deliver COBRA Notices?](#)
- [Do You Provide Terminated Employees with Adequate and Timely Benefits Information?](#)
- [How Many Days Are Allowed to Provide Qualifying Event Notice — 14 or 44?](#)

OnQue Technologies, COBRA Tips and COBRA OnQue are trademarks or registered trademarks of OnQue Technologies, Inc.

Copyright © 2006 OnQue Technologies, Inc.