



## What Qualifying Events Trigger COBRA?

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers to offer covered employees who lose their health benefits due to a qualifying event to continue group health benefits for a limited time at the employee's own cost. Per regulation, qualifying events are specific events that cause or trigger an individual to lose health coverage. The type of qualifying event determines who the qualified beneficiaries are and the maximum length of time a plan must offer continuation coverage. A group health plan may provide longer periods of continuation coverage beyond the maximum 18 or 36 months required by law.

The seven triggering events below are qualifying events for COBRA coverage if they result in loss of coverage for the qualified beneficiaries, which may include the covered employee, the employee's spouse, and dependent children.



### 1. Employment Termination

The voluntary or involuntary "for cause" termination of a covered employee's employment is a triggering event when it causes the covered employee, spouse, or dependent children to lose coverage. To be considered a qualifying event, the termination must be for reasons other than gross misconduct.

Employment termination includes retirement, voluntary quitting, layoffs, strikes, lockouts, and other employer-initiated discharges. Tendering a resignation is not a triggering event because the employment relationship continues during this time. In contrast, leaving the company is a qualifying event because it terminates the employment relationship and causes the employee to lose coverage. In addition, transferring to another position within the company is not a qualifying event because there is no employment termination.

*Example 1:* Jim is terminated for gross misconduct and his wife and dependent children lose coverage. Because Jim's termination was for gross misconduct, there is no qualifying event for Jim, his wife, or dependent children and they are not entitled to COBRA continuation coverage.

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*Example 2:* Sarah is covered by a group health plan and decides to retire. Upon retirement, she is required to pay an increased amount for the same group health plan she had before retirement. Sarah is entitled to COBRA coverage because her retirement is a qualifying event (termination of employment) and the increased amount for coverage led to a loss of coverage.

To receive COBRA rights, the employer has 30 days after the employee's job loss to notify the group health plan administrator about the qualifying event. The maximum coverage period is 18 months.

Employers who believe an employee engaged in gross misconduct should always seek counsel to confirm that, under applicable state laws and based on the individual's job description and documentation in the employee's file, gross misconduct actually occurred. In many instances, extremely objectionable behavior is not considered gross misconduct based on underlying case law in the area. Employers should never label behavior as gross misconduct without their legal counsel's affirmation.

## 2. Reduction of Hours

The reduction of hours is a qualifying event for a covered employee, spouse, and dependent children if it causes them to lose coverage and is not accompanied by an immediate termination. The reduction of hours must be due to reasons other than gross misconduct, such as switching from full-time to part-time, a temporary layoff, or a leave of absence.

*Example:* Ann is a full-time employee and was eligible for the group health plan after she worked the required number of hours. Due to extenuating circumstances, Ann could no longer work the required hours necessary to meet the group health plan eligibility requirements. Ann is entitled to COBRA continuation coverage because she lost coverage due to her reduction of hours.

A leave of absence presents a unique issue because it will likely result in a reduction of hours. However, it will not always result in a loss of coverage so the beneficiaries should check the arrangements under the group health plan to determine whether there is a qualifying event.

Taking a leave of absence under the Family and Medical Leave Act of 1993 (FMLA) is not a COBRA qualifying event because FMLA requires a covered employer to maintain group health plan benefits for an employee so the employee has no coverage loss. However, an employee on FMLA leave becomes eligible for COBRA in the following circumstances: (1) when the employee does not return to work at the end of the FMLA leave, (2) when the employee notifies the employer before the 12-week FMLA period ends that the employee will not return to work, and (3) when the employer's health plan extends coverage beyond the COBRA qualifying event dates.

A severance agreement may provide for a reduction of hours during which the employee maintains the employment relationship even though the employee does not return to work. In this case, a COBRA qualifying event occurs due to the reduction of hours if it causes the beneficiaries to lose their group health plan coverage.

The employer has 30 days after the employee's reduction of hours to notify the group health plan administrator about the qualifying event. The maximum coverage period is 18 months.

## ACA Implications for a Reduction in Hours

Under the Patient Protection and Affordable Care Act's (ACA's) look-back method, the employer looks at the number of hours the employee averaged during a look-back period called a "measurement period."

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Once the employer determines whether the employee worked full time during the measurement period, that determination generally will apply throughout the related stability period regardless of the number of hours the employee actually works (unless the employee's employment ends).

This means that if an employee was determined to be full-time and benefits-eligible at the end of a measurement period, outside of very narrow circumstances involving a bona fide change in position, and the employee's hours are reduced below 30 hours a week, the employee must remain eligible for benefits for the remainder of the stability period. Prior to the ACA, most employers would remove an employee from the plan if the employee's hours were below the eligibility threshold and, if applicable, offer COBRA.

Although an offer of COBRA coverage constitutes an offer of coverage from an ACA perspective, it is unlikely that a COBRA offer will meet affordability requirements, which would expose the employer to potential penalties. This is because, although the employee's hours have dipped below the 30-hour threshold, the employee is considered full time through the end of the stability period.

Employers that are using the measurement and look-back method should take special care and review eligibility policies in their plan documents and employee handbooks. An overly simple policy that merely sets eligibility for the group health plan at the 30-hour threshold and does not mention the ACA's measurement methods would create a conflict for the employer if an employee dropped below 30 hours during the stability period.

An employer would be forced to choose which regulations to break if its plan limited eligibility to employees working 30 hours or more, but the ACA-related stability period required that the employer offer benefits to anyone who was deemed full-time at the end of the earlier measurement period, regardless of how many hours the employee worked during the stability period. Employers should consult with legal counsel to ensure their eligibility policy is ACA compliant.

### 3. Divorce or Legal Separation

The entry of a divorce decree is a qualifying event for the ex-spouse and the covered employee's dependent children if it causes them to lose coverage. Filing for divorce is not a triggering event.

Legal separation may be a triggering event for the spouse and dependent children, especially if it precedes the divorce. Whether legal separation is a triggering event depends on the group health plan. Under some plans, legal separation will not cause a loss of coverage and will not be a qualifying event. COBRA does not address annulments, so qualified beneficiaries should use state law to determine whether an annulment is equivalent to a divorce.

If the covered employee removes the spouse from the health plan in anticipation of the divorce, then the plan will still make COBRA available to the ex-spouse as of the date of the divorce after receiving notice of the divorce. The group health plan administrator will have to determine whether coverage was terminated in anticipation of a divorce or for other reasons.

The covered employee or one of the qualified beneficiaries must notify the group health plan administrator within 60 days of the divorce or legal separation. The maximum coverage period is 36 months. The example below highlights the importance of notifying the group health plan administrator of the qualifying event that caused the coverage loss. Generally, the ex-spouse would be entitled to 36 months of coverage in the case of a divorce; however, the covered employee or one of the qualified

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beneficiaries must notify the group health plan administrator of the qualifying event to receive any COBRA benefits.

*Example:* John continues to cover his ex-spouse under a group health plan after a divorce. The employee failed to report the divorce to the group health plan within 60 days of the divorce. John terminated employment after the ex-spouse was covered for six months incorrectly. The ex-spouse is not entitled to COBRA coverage because there was no proper and timely notice of the divorce to the plan administrator.

## 4. Death of the Covered Employee

The death of a covered employee is a triggering event for the spouse and covered employee's dependent children to elect COBRA if it causes them to lose coverage.

The employer has 30 days after the employee's death to notify the group health plan administrator about the qualifying event. The maximum coverage period is 36 months.

## 5. Dependent Child Ceases to Be a Dependent under the Plan

Under the ACA, most health plans must cover children until the age of 26 unless state insurance requirements extend the dependent coverage age. In most cases, the covered employee's children will likely lose coverage under the plan when they turn 26 years old and cease their dependent status. A covered employee's dependent child who ceases to be dependent under the plan may experience a qualifying event and can elect up to 36 months of COBRA continuation coverage.

The covered employee or one of the qualified beneficiaries must notify the group health plan administrator within 60 days of the child's loss of dependent status.

A covered employee or qualified beneficiary cannot be required to give notice of a divorce, separation, or child's dependency status loss until the employer informs the individual of the notice requirement. Under the regulations, the covered employee or qualified beneficiary must give notice within 60 days of the *later* of:

1. The date of the qualifying event.
2. The date that coverage would be lost because of the qualifying event.
3. The date on which the employee or qualified beneficiary is informed of the notice requirement through a plan's summary plan description (SPD) or the initial COBRA notice.

## 6. Medicare Entitlement

Individuals become entitled to Medicare when they are eligible and enroll in Medicare Part A or B. The mere fact that an individual is *eligible* to enroll in Medicare does not mean the individual is *entitled* to Medicare. Because Medicare entitlement rarely causes a loss of coverage due to the Medicare Secondary Payer (MSP) provisions preventing most group health plans from terminating coverage for those eligible for Medicare, it will rarely be a qualifying event.

In addition, voluntarily dropping the group health plan after becoming entitled to Medicare will not create a triggering event.

*Example:* Tom was employed full time and enrolled to the group health plan with his wife, Jane. Tom turns 65 years old and becomes entitled to Medicare; however, Jane is not yet entitled to Medicare.

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Tom's employer does not exclude individuals from the group health plan when they become entitled to Medicare. If Tom chooses to enroll in Medicare and drop his group health coverage, there is no COBRA qualifying event that would allow Jane to continue coverage. In some states, state continuation law would provide Jane with continuation coverage.

A retiree's entitlement to Medicare is typically a qualifying event for COBRA continuation coverage since the MSP provisions allow group health plans to terminate coverage for retired employees when they become entitled to Medicare due to age. When Medicare entitlement causes group health plan coverage loss, it will be considered a qualifying event for the spouse and retired employee's dependent children.

*Example:* Tom was employed full-time and enrolled to the group health plan with his wife, Jane. Tom is 65 years old and entitled to Medicare; however, Jane is not yet entitled to Medicare. Tom retired and his Medicare entitlement caused a loss of coverage. Jane may continue coverage through COBRA for 36 months due to the triggering event (her retired husband's entitlement to Medicare) if it caused her to lose coverage.

If a qualified beneficiary becomes entitled to Medicare after electing COBRA, then COBRA coverage can be terminated before the end of the maximum coverage period. However, if a qualified beneficiary becomes entitled to Medicare before electing COBRA, then the qualified beneficiary may elect COBRA coverage.

The employer has 30 days after the employee becomes eligible for Medicare to notify the group health plan administrator about the qualifying event and the qualified beneficiaries can elect up to 36 months of COBRA continuation coverage from the date of Medicare entitlement.

### **7. Bankruptcy**

An employer's Chapter 11 bankruptcy can be a triggering event for retirees and their spouses as well as dependent children who lose coverage within the 12 months before or after the date on which bankruptcy proceedings begin as long as the employer continues to offer a health plan to employees.

The employer has 30 days after filing for bankruptcy to notify the group health plan administrator about the qualifying event. The covered retiree's COBRA coverage will continue during the retiree's lifetime. The covered retiree's spouse and dependent children can elect up to 36 months of coverage after the retiree's death.

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## Quick Reference

The following chart indicates the qualifying event, the individual who is entitled to elect COBRA, and the maximum length of COBRA continuation coverage. For an event to be considered a qualifying event, it must result in group health plan coverage loss.

Qualifying Events	Qualified Beneficiaries	Maximum Period of Continuation Coverage*
Termination of employment	Employee Spouse Dependent Children	18 months
Reduction of hours	Employee Spouse Dependent Children	18 months
Divorce or legal separation	Spouse Dependent Children	36 months
Death of the covered employee	Spouse Dependent Children	36 months
Dependent child ceases to be a dependent under the plan	Dependent Children	36 months
Entitlement to Medicare	Spouse Dependent Children	36 months
Employer's bankruptcy	Retirees Spouse Dependent Children	Until retiree's death for the covered retiree 36 months after retiree's death for covered spouse and/or dependent children

\* The maximum period of COBRA continuation coverage may be extended due to a second qualifying event or disability. The maximum period may also be terminated early when COBRA premiums are not paid.

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