

29 U.S.C.A. § 1163

**C****Effective: [See Text Amendments]**United States Code Annotated [Currentness](#)

Title 29. Labor

Chapter 18. Employee Retirement Income Security Program [\(Refs & Annos\)](#)Subchapter I. Protection of Employee Benefit Rights [\(Refs & Annos\)](#)▣ [Subtitle B](#). Regulatory Provisions▣ [Part 6](#). Continuation Coverage and Additional Standards for Group Health Plans [\(Refs & Annos\)](#)**→ § 1163. Qualifying event**

For purposes of this part, the term "qualifying event" means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this part, would result in the loss of coverage of a qualified beneficiary:

- (1) The death of the covered employee.
- (2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.
- (3) The divorce or legal separation of the covered employee from the employee's spouse.
- (4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [ [42 U.S.C.A. § 1395 et seq.](#)].
- (5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.
- (6) A proceeding in a case under Title 11, commencing on or after July 1, 1986, with respect to the employer from whose employment the covered employee retired at any time.

In the case of an event described in paragraph (6), a loss of coverage includes a substantial elimination of coverage with respect to a qualified beneficiary described in [section 1167\(3\)\(C\)](#) of this title within one year before or after the date of commencement of the proceeding.

CREDIT(S)

([Pub.L. 93-406, Title I, § 603](#), as added [Pub.L. 99-272, Title X, § 10002\(a\)](#), Apr. 7, 1986, 100 Stat. 229, and amended [Pub.L. 99-509, Title IX, § 9501\(a\)\(2\)](#), Oct. 21, 1986, 100 Stat. 2076.)

## HISTORICAL AND STATUTORY NOTES

1986 Acts. [Senate Report No. 99-146](#) and [House Report Nos. 99-241](#) (Parts I to III) and 99-300, see 1986 U.S. Code Cong. and Adm. News, p. 42.

[House Report No. 99-727](#), [House Conference Report No. 99-1012](#), and Statement by President, see 1986 U.S. Code Cong. and Adm. News, p. 3607.

## References in Text

The Social Security Act, referred to in par. (4), is Act Aug. 14, 1935, c. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (section 1395 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

## Amendments

1986 Amendments. Par. (6). Pub.L. 99-509, § 9501(a)(2), added par. (6).

## Effective and Applicability Provisions

1986 Acts. Amendment by Pub.L. 99-509 effective, except as otherwise provided, as if included in Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub.L. 99-272, see section 9501(e) of Pub.L. 99-509, set out as a note under section 162 of Title 26, Internal Revenue Code.

## LAW REVIEW COMMENTARIES

Continuation coverage [under COBRA: A study in statutory interpretation. Sarah Rudolph Cole, 22 J.Legis. 195 \(1995\).](#)

## RESEARCH REFERENCES

## ALR Library

[126 ALR. Fed. 97](#), Construction and Application of ERISA Provisions Governing Continuation Coverage Under Group Health Plans ([29 U.S.C.A. §§ 1161 et seq.](#)).

## Encyclopedias

[Am. Jur. 2d Employment Relationship § 134](#), Termination; Reduction of Hours.

[Am. Jur. 2d Employment Relationship § 135](#), Divorce; Legal Separation.

[Am. Jur. 2d Employment Relationship § 136](#), Medicare Entitlement.

[Am. Jur. 2d Employment Relationship § 137](#), Employer Bankruptcy.

## NOTES OF DECISIONS

**Divorce or legal separation** [5](#)

**Gross misconduct** [1](#)

**Reduction in working hours** [2](#)

**Termination** [3](#)

**Time of qualifying events** [4](#)

[1](#). Gross misconduct

Even if honestly held, employer's mere belief that employee fraudulently accepted disability benefits was insufficient, by itself, to relieve employer of its obligation to provide terminated employee with continued health care coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA). [Kariotis v. Navistar Intern.](#)

[Transp. Corp., C.A.7 \(Ill.\) 1997, 131 F.3d 672](#). Insurance ↪ 2457(2)

District court's finding that employer did not terminate employee for gross misconduct under Consolidated Omnibus Budget Reconciliation Act (COBRA) was not clearly erroneous; employer who fired employee testified that he considered employee's job performance excellent at time he fired him for giving his resignation, that it was only after employee was fired that employer ever doubted employee's ability or loyalty, and although evidence may have shown incompetence in employee's job performance, it did not show gross misconduct. [Mlsna v. Unitel Communications, Inc., C.A.7 \(Ill.\) 1996, 91 F.3d 876](#). Labor And Employment ↪ 863(2)

Terminated employee's adherence to orders of company president, to deliver certain items from office to president's new apartment, and to not reveal president's new home address to others did not amount to gross misconduct under federal law or Massachusetts law as predicted by District Court, as would relieve employer of its obligation to provide employee with continued health care coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA); employee did not intend to harm employer by performing work on behalf of president. [Richard v. Industrial Commercial Elec. Corp., D.Mass.2004, 337 F.Supp.2d 279](#). Labor And Employment ↪ 552(3)

Supervisor's assault on employee was "gross misconduct" allowing employer to discontinue insurance benefits; employee required five days of hospitalization as result of beating, and manager's actions were serious enough to warrant a felony conviction in state court. [Zickafoose v. UB Services, Inc., S.D.W.Va.1998, 23 F.Supp.2d 652](#). Labor And Employment ↪ 552(3)

Alleged conduct for which employee was discharged was "gross misconduct," for that former employee's spouse and child failed to establish likelihood of success on merits, necessary for preliminary injunction in their action alleging that employer violated Consolidated Omnibus Budget Reconciliation Act (COBRA) by refusing continuation of health care coverage; employer had policy prohibiting operation of company vehicle while under influence of alcohol, and employee allegedly drove company vehicle while intoxicated, caused accident in which vehicle was damaged and persons were injured, and plead guilty to misdemeanor. [Collins v. Aggreko, Inc., D.Utah 1995, 884 F.Supp. 450](#). Insurance ↪ 2457(2)

Employer's discharge of employee as result of finding that she had engaged in "gross misconduct," which was based on her own admission, was not unreasonable, and thus denial of eligibility for continuing health care benefits did not violate Consolidated Omnibus Budget Reconciliation Act (COBRA); employer did not show prima facie case of desire to interfere with health benefits was determining factor in employment decision. [Burke v. American Stores Employee Ben. Plan, N.D.Ill.1993, 818 F.Supp. 1131](#). Labor And Employment ↪ 552(3)

Misappropriating company funds would constitute "gross misconduct" and would relieve employer of COBRA (Consolidated Omnibus Budget Reconciliation Act) obligations to provide continuing health coverage if employee is terminated due to the alleged wrongdoing. [Conery v. Bath Associates, N.D.Ind.1992, 803 F.Supp. 1388](#). Labor And Employment ↪ 552(3)

Employee's violation of her employer's confidentiality policy was not "gross misconduct" that would have prevented employee from electing to continue health care benefits at her own cost as provided under Comprehensive Omnibus Budget Reconciliation Act (COBRA) Amendments to ERISA; there was no evidence that employee had "evil design" to injure employer when she telephoned co-worker and repeated what she had overheard during conversation between company executives. [Paris v. F. Korbel & Bros., Inc., N.D.Cal.1990, 751 F.Supp. 834](#). Labor And Employment ↪ 552(3)

Genuine issue of material fact, as to whether employee was terminated for "gross misconduct" under ERISA definition of "qualifying events" as would disentitle him to Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits, precluded summary judgment on employee's claim for failure to provide notification of benefits under COBRA. [Deutsch v. Kroll Associates, Inc., S.D.N.Y.2003, 2003 WL 22203740](#), Unreported. Federal Civil Procedure ⚡ 2497.1

## 2. Reduction in working hours

Employee's return to work on part-time basis was "qualifying event," for purpose of determining when employee was entitled to notice of continuation of coverage benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA), where benefits were provided only to full-time employees. [Livingston v. South Dakota State Medical Holding Co., Inc., D.S.D.2006, 411 F.Supp.2d 1161](#). Labor And Employment ⚡ 485

Failure of employee, an insurance agent, to achieve minimum annual premium sales required to be eligible for employer's health benefit plan was not a "qualifying event" entitling employee to notice of his right to continuation of coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA), despite employee's claim that such failure was the equivalent of a cancellation of coverage due to reduction of work hours. [Hales v. Life Ins. Co. of Alabama, S.D.Miss.1997, 994 F.Supp. 756](#). Labor And Employment ⚡ 485; Labor And Employment ⚡ 568

Reduction of employee's working hours from 40 to 0 hours per week was not "qualifying event" triggering requirement that employer notify ERISA health plan administrator of event and that administrator notify employee of right to continued participation in plan, particularly as employee continued to be covered under plan for at least ten full months after reduction in hours occurred. [Jachim v. KUTV Inc., D.Utah 1992, 783 F.Supp. 1328](#). Labor And Employment ⚡ 485

## 3. Termination

Employee's termination of employment was not a "qualifying event" under Consolidated Omnibus Budget Reconciliation Act (COBRA); employee continued to receive coverage under the Group Health Plan following his termination and ERISA plan administrator terminated employee's medical benefits only when it no longer considered him totally disabled. [Karp v. Guardian Life Ins. Co. of America, S.D.Ga.2006, 456 F.Supp.2d 1375](#), affirmed [199 Fed.Appx. 870, 2006 WL 2844258](#). Labor And Employment ⚡ 485

Group health plan did not provide for automatic continuation of coverage following employee's termination, and thus employee's termination was a "qualifying event" which triggered notice required under the Comprehensive Omnibus Budget Reconciliation Act (COBRA) of employee's option to continue coverage under plan, regardless of when the loss of coverage actually occurred; that employee was required to complete and return enrollment form within a specified time in order to continue her coverage and that her failure to do so would result in retroactive termination of coverage demonstrated that continuation of coverage was not automatic. [Fenner v. Favorite Brand Intern., Inc., N.D.Ill.1998, 25 F.Supp.2d 870](#). Labor And Employment ⚡ 485

Employees' termination was "qualifying event" that gave rise to any duty that administrator of ERISA plan had to notify employees of their right to elect continuation coverage for their health care benefits as required by the Comprehensive Omnibus Budget Reconciliation Act (COBRA). [Middleton v. Russell Group, Ltd., M.D.N.C.1996, 924 F.Supp. 48](#). Labor And Employment ⚡ 485

Under Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), if employment is terminated for "gross misconduct," then termination is not properly "qualifying event" which will entitle worker to continuing

health coverage under COBRA. [Burke v. American Stores Employee Ben. Plan, N.D.Ill.1993, 818 F.Supp. 1131.](#) Insurance ☞ 2457(2)

#### 4. Time of qualifying events

"Qualifying event" triggering health plan administrator's obligations under Consolidated Omnibus Budget Reconciliation Act (COBRA) to notify employees and beneficiaries of right to elect to continue health insurance coverage takes place when employee actually stops working for employer or has his hours reduced to point of losing coverage, and not when employee gives notice of resignation. [Mlsna v. Unitel Communications, Inc., C.A.7 \(Ill.\) 1994, 41 F.3d 1124,](#) rehearing denied. Labor And Employment ☞ 485

Under Consolidated Omnibus Budget Reconciliation Act (COBRA) provisions governing "continuation coverage" under ERISA Health Plan, 18-month continuation coverage period of employee's family ran from date of event which triggered employee's loss of benefits under terms of employer's group health insurance plan, and not from when employer ceased its voluntary provision of employer-paid group plan insurance and family's self-paid "continuation coverage" commenced. [Gaskell v. Harvard Co-op. Soc., C.A.1 \(Mass.\) 1993, 3 F.3d 495.](#) Insurance ☞ 2457(2)

#### 5. Divorce or legal separation

State court's interlocutory protective order requiring husband, who was covered under employer's group health insurance plan, to stay away from wife pending their divorce did not qualify as a "legal separation" under Consolidated Omnibus Budget Reconciliation Act (COBRA), and thus was not a qualifying event triggering notification procedures under COBRA and the wife's corresponding obligation to pay premiums in exchange for continued health insurance coverage; legal separation within meaning of COBRA occurred only upon entry of final court decree adjudicating parties legal rights and obligations but preserving the marriage bond, and an action for legal separation was separate and distinct from an action for divorce or dissolution of marriage. [Simpson v. T.D. Williamson Inc., C.A.10 \(Okla.\) 2005, 414 F.3d 1203.](#) Insurance ☞ 2457(1); Insurance ☞ 2457(4); Labor And Employment ☞ 485

Temporary order requiring divorcing spouses to live apart was not "legal separation," and thus was not qualifying event triggering former husband's employer's termination of former wife's health insurance and notification under Consolidated Omnibus Budget Reconciliation Act (COBRA); termination of coverage would have rendered meaningless provisions of automatic injunction mandating continuance of insurance while divorce was pending. [Simpson v. T.D. Williamson, Inc., N.D.Okla.2003, 321 F.Supp.2d 1240.](#) Insurance ☞ 2457(1); Insurance ☞ 2457(4); Labor And Employment ☞ 485

29 U.S.C.A. § 1163, 29 USCA § 1163

Current through P.L. 110-109 approved 10-31-07

Copr. © 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

END OF DOCUMENT