

'Gross Misconduct' Cancels COBRA Coverage

Q. Do I have to provide a COBRA notice for an employee who is terminated for a positive drug test shortly after starting work? —D.W., Colorado

A. COBRA (the Consolidated Omnibus Budget Reconciliation Act) generally requires that group health plans sponsored by employers with 20 or more employees offer workers and their families the opportunity for temporary extension of health coverage upon termination of employment. But you don't have to offer COBRA coverage when an employee is fired for gross misconduct.

Courts have in some circumstances found alcohol or drug abuse to constitute gross misconduct. Unfortunately, there's no bright line stating that one positive drug test constitutes gross misconduct. Your safest course of action would be to issue a COBRA notice and extend coverage.