

# CASE LAW

## Qualifying Events and Coverage Periods

### Mlsna v. Unitel

(United States Court of Appeals for the Seventh Circuit, 91 F. 3d. 876 (7th Cir. 1996))

After more than five years of litigation and two appeals, Eileen Mlsna was awarded more than \$130,000. Theodore and Eileen Mlsna were covered under Unitel Communications, Inc.'s group health plan at the time Theodore submitted his letter of resignation to Paul Mallin, the President of Unitel, on January 23, 1989. On January 25, 1989, Mallin relieved Theodore of his duties, effective immediately. Neither Theodore nor Eileen were notified of their right to COBRA continuation coverage. Sometime shortly after the coverage under the Unitel plan ended, Eileen incurred a significant amount of medical bills. She subsequently filed suit, seeking COBRA continuation coverage.

### DISTRICT COURT RULING

Among the defenses put forth by Unitel was the claim that Theodore's termination was for gross misconduct; it (Unitel) had no obligation to provide continuation coverage to either Theodore or Eileen Mlsna. The court dismissed that argument, ruling that Theodore had resigned. The court ruled in Eileen's favor in regard to the claims incurred. The lower court awarded an ERISA penalty, attorneys' fees and costs to the Mlsnas.

In a commentary that provides employers insight on how the courts narrowly view the gross misconduct exception, Judge Zagel wrote the following:

***“Unitel argues it terminated Theodore Mlsna for gross misconduct, so no Qualifying Event took place to trigger plaintiff's [Eileen's] COBRA notification. Although a plain reading of [COBRA] seems to support defendant's contention, this interpretation is problematic. There is no case law to support the conclusion that when an employer terminates an employee for gross misconduct, the employer's duty to provide the employee's spouse with COBRA notification is excused. This interpretation seems unlikely in the context of the legislative history. Congress wanted to protect spouses and dependents of employees from abruptly losing health care coverage. It appears unreasonable that the action of the employee could excuse the COBRA protection of the spouse.”***

### APPELLATE COURT RULING

In Unitel's appeal, the appellate court made note of the fact that turning in a letter of resignation with notice is not a Qualifying Event. The last day worked would be the date of the Qualifying Event, and the appeals court ruled that the lower court must determine when, and under what circumstances, Theodore left Unitel, and whether a Qualifying Event occurred. The appellate court's contention was that, since this was now a case potentially involving involuntary termination instead of voluntary termination, the gross misconduct exception could apply to both Theodore **and** Eileen. The appellate court disagreed with Judge Zagel's commentary on Congressional intent. The higher court found that this line of reasoning conflicted with the plain language of the statute.

### FINAL RULING

The district court's second decision concurred that Theodore was not fired for gross misconduct and that a Qualifying Event had occurred on the date that he was fired. The court awarded Eileen **\$23,916.45** for her uninsured medical bills, **\$1,759.98** for costs, and **\$59,800.90** for attorneys' fees. A fee of **\$20** per day was also awarded for the period from March 9, 1989, to May 9, 1995, for a total fine of **\$45,040** for COBRA notification violation. Unitel challenged the award of fees, maintaining that the district court abused its discretion in awarding the enhanced fees under COBRA and attorneys' fees. The court of appeals found that although the award was significant, the COBRA statute allows fines up to **\$100** per day and that a **\$20** per day fine was not an abuse of discretion on the part of the district court. The award of over **\$130,000** would stand.