

Domestic Partner Benefits: A Short Course for Employers

As part of its employee benefits offering, an employer may choose to extend coverage under its group health plan to the domestic partners of employees. An employer may make this decision to more effectively recruit and retain talent, or it may do so based on society's evolving views of marriage and relationships. Regardless of the motivation, employers that decide to offer coverage to domestic partners face several important compliance issues, including design-based considerations and taxation requirements.

Eligibility for Coverage

When deciding to offer health plan coverage to domestic partners, employers should determine what changes need be made to the existing plan design. Most importantly, the plan will need to adopt a definition of a domestic partner in order to evaluate a partner's eligibility for coverage.

Defining a Domestic Partner



First, the employer will need to consider how the plan will define "domestic partner" for purposes of eligibility. Unlike spouses, a domestic partnership is not a relationship recognized by federal law, so no single definition of a domestic partner exists. Instead, the employer will need to consider state and local laws that may define a domestic partnership or develop its own definition of what constitutes such a relationship. The definition should be based on clear criteria, such as sharing a residence or maintaining a relationship for a minimum duration of time, and it should be applied consistently to all employees regardless of sex or gender.

Coverage Mandates



Some states and localities that recognize domestic partnerships (often referred to as registered domestic partnerships or civil unions) may require that employers offer coverage to the domestic partners of employees. These requirements may apply by way of the insurance carrier in an insured arrangement, or through other avenues such as city contracting requirements. Employers should determine whether any such coverage mandate

applies to them and, if so, the way in which the mandate defines an eligible domestic partner. This definition will likely dictate how the employer's plan defines a domestic partner for purposes of enrolling in group health coverage.

Carrier Restrictions



In developing the eligibility criteria for a domestic partner, all employers should be mindful of any restrictions imposed by an insurance carrier – including stop-loss carriers. The insurance carrier must agree to the employer's proposed eligibility definition for domestic partner coverage, otherwise the employer runs the risk of denied claims for enrolled partners.

Cafeteria Plans



Employers that sponsor cafeteria plans should be aware of the eligibility rules that are set by the Internal Revenue Code (IRC). Under the IRC, spouses are eligible to receive tax-favored benefits under a cafeteria plan, but individuals in domestic partnerships are not. This is because the domestic partner relationship is not one recognized by federal law, including the IRC.

Consequently, unless the domestic partner also qualifies as an employee's tax dependent, benefits for a domestic partner must be provided outside of the cafeteria plan. Additionally, medical expenses incurred by a domestic partner are not eligible for reimbursement through an employee's Health FSA or HSA.

Taxation Issues

Because domestic partnerships are not recognized by federal law, the decision to provide domestic partner benefits raises some unique taxation issues. These issues will require employers to take additional administrative action and to provide clear communication to employees to ensure an adequate understanding of the tax consequences of enrolling a domestic partner in the group health plan.

Contributions Towards the Cost of Coverage



Benefits for domestic partners cannot be provided through a cafeteria plan (unless the partner qualifies as the employee's tax dependent), which means that any employee contribution towards the cost of domestic partner coverage must be taken on a post-tax basis. As such, employers will need to set up their payroll systems to appropriately accommodate both pre-tax and post-tax deductions.

Imputed Income



Imputed income is another tax consequence of providing domestic partner coverage. The IRC permits the value of health coverage provided by an employer to be excluded from the employee's gross income, but this exclusion does not apply to coverage provided to domestic partners. As a result, the value of the health coverage provided to the domestic partner, whether through an insured group health plan or a self-insured plan (including an HRA), must be imputed as taxable income to the employee.

To impute income, the employer must determine the fair market value of the coverage provided to the domestic partner, less any post-tax contributions made by the employee. This calculation may be based on either the COBRA premium cost of coverage for the partner or the cost differential between employee-only and employee-plus-domestic-partner coverage levels.

Next Steps

There are numerous compliance considerations that an employer must navigate when deciding whether to offer domestic partner benefits, which requires thoughtful planning and some coordination with third parties. As part of its decision-making process, an employer should;

- Identify any applicable **state or local mandates** that may require the employer to provide health coverage to the domestic partners of employees;
- Determine what **benefits** will be offered to domestic partners and whether the children of domestic partners will also be eligible to enroll in the plan;
- Clearly define the **eligibility criteria** that must be satisfied in order to enroll a domestic partner, and evaluate the need or desire for any documentation;
- Coordinate with **insurance carriers and third-party administrators** before including domestic partners in coverage, and execute any plan amendments that may be necessary;
- Work with **payroll providers** to effectively accommodate necessary post-tax payroll deductions and end-of-year imputed income calculations; and
- Understand any differences between the **state and federal levels on the tax treatment** of benefits provided to domestic partners.

ADDITIONAL RESOURCES

Internal Revenue Service (IRS)

[Answers to Frequently Asked Questions for Registered Domestic Partners and Individuals in Civil Unions](#)