

# Answering Your Questions About Benefits Coverage for Domestic Partners



Domestic partnership coverage allows you to recognize different types of families and promote a message of diversity that resonates with today's workforce. Now that same-sex marriage is legal in all 50 states, domestic partnership benefits are on the decline, but many employers still offer them.

## What is a domestic partnership?

Domestic partnerships are generally defined as committed couples who are living together and not married. "Domestic partner" is the term used to refer to each of the two individuals in that committed relationship.

Domestic partners are not always same-sex partners. Some states and plans allow domestic partner coverage regardless of the genders involved in the relationship. Typically, domestic partners must meet certain criteria and provide proof that they are:

- Age 18 or older
- Not currently married or in a civil union or domestic partnership with another person

- Not related by blood
- Residing together lawfully in an intimate relationship with the intention to continue the arrangement indefinitely for more than six months
- Financially interdependent

Many companies require the employee and their domestic partner to file an affidavit stating that they meet these requirements and are willing to provide documentation as needed. This proof may include:

- Copies of leases, mortgages, utility bills, etc. that show joint financial responsibility
- Proof of joint vehicle ownership
- Designation of the domestic partner as beneficiary of life insurance or retirement proceeds

If the domestic partnership ends, employees may be required to notify the employer within a certain timeframe (e.g., within 30 days).

## **Do you have to offer coverage to domestic partners?**

Unless your state mandates coverage of domestic partners, you do not have to extend the offer of coverage to domestic partners under your employee benefits plans. It is a choice you make as an employer.

Some states, including New Jersey and California, have strict requirements for what you must offer domestic partners. Be sure to talk with your broker or benefits adviser to make sure you are in compliance.

## **Are dependent children offered coverage?**

Employers offering coverage to domestic partners almost always offer this coverage as well.

## **Is offering coverage to domestic partners and their dependents expensive?**

One of the biggest concerns in offering health care benefits to domestic partners and their dependents can be the cost. However, enrollment levels are often much lower than expected. Domestic partners may have their own health care coverage through their employer and not need the coverage.

## **Do you need to request proof of partnership from all employees?**

Verifying dependent eligibility for all employees under your benefits plan is a good idea. You may want to request proof of eligibility for spouses/partners and dependent children to ensure you are offering coverage only to individuals who are truly eligible. This proof may include:

- Marriage certificates
- Birth certificates
- Court documents
- Domestic partnership affidavits

If your plan states that spouses with access to coverage from another source may not enroll in your plan, you may request affirmations that coverage under another health plan (including Medicare and Medicaid) is not available.

## **Are domestic partners eligible for all coverages under employee benefit plans?**

Most employers offer basic benefits to domestic partners. This can include health care, dental and vision. Voluntary coverages such as basic and supplemental life insurance are typically excluded.

## **What about changes in status and COBRA? Do these rules apply to domestic partners?**

Qualified changes in status generally apply only to the employee enrolled in the plan. COBRA, or continuation coverage, is also not available to domestic partners as they are not considered qualified beneficiaries on their own.

However, if the employee experiences a COBRA-qualifying event such as termination or reduction in hours, they may elect COBRA coverage at the same coverage level they had when they were enrolled as an employee. Therefore, if they were enrolled in family coverage when they terminated employment, they may enroll for family coverage under COBRA.

## **Are there special tax considerations on domestic partner coverage?**

Yes. The IRS taxes benefits to domestic partners and their children as imputed income on the employee's Form W-2. Most states conform to federal tax law as well. So be sure to remind your employee to consult a tax adviser.

In addition, domestic partners may not be eligible to enroll in flexible spending accounts and health savings accounts as these benefits are available only to tax dependents. Again, your employees may want to consult a tax adviser to be sure.

## How do you communicate this benefit to your employees?

Under the Employment Retirement Income Security Act (ERISA) you are required to provide plan documentation including eligibility criteria. This document should list exactly who is eligible for coverage and the benefits for which they may enroll. You may also want to include information about the domestic partner benefit in new hire orientation materials, open enrollment items and regular employee benefits communications.

If you are going to require a Domestic Partnership Affidavit, you will want to make a copy of the form readily available and provide instructions on who must complete and sign the form. Materials should also encourage employees to consult a tax adviser regarding federal and state tax laws.

## Where do you go for help or to get more information?

Check with your insurance carriers to make sure they offer coverage to domestic partners. There may also be legal requirements in your state that must be met.

Your broker or benefits adviser can help you determine if offering coverage to domestic partners is right for you. They can also assist in gathering information from your carriers and ensuring coverage is legal in the states in which you do business.

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