



## Domestic Partner Benefits

An ever-growing number of employers, including a majority of Fortune 500 companies, offer benefits to domestic partners of employees and their families.<sup>1</sup> Regardless of the size of the business, the trend towards domestic partner benefits is increasing.

Domestic partners are two individuals who are in a long-term committed relationship and are responsible for each other's financial and emotional well-being. Employers can create their own definitions of "domestic partner" for the purposes of benefits eligibility, although they increasingly allow government-based recognition of same-sex relationships to satisfy their requirements. Typically, employers require that the partners are emotionally and financially interdependent, do not have a different domestic partner or spouse, have reached the age of consent and are not related.

According to the Human Rights Campaign ([www.hrc.org](http://www.hrc.org)) the number of U.S. employers offering Domestic Partner benefits:

	Fortune 100	Fortune 500	Fortune 1000
2009 interim total	83 (83%)	293 (59%)	404 (40%)
2008 total	83 (83%)	286 (57%)	390 (39%)
2003 total	64 (64%)	200 (40%)	----

### Defining "Domestic Partner"

The concept defining domestic partner eligibility is simple when broken down: intended to provide benefits to adult individuals who have close, personal relationships with employees akin to marriage. The idea for many employers is to provide "spousal-equivalent" benefits to employees' life partners.<sup>2</sup>

However, there are several issues that employers must consider - and must be prepared to explain to employees - when defining eligible domestic partners. For instance:

- ▶ If the goal is "spousal-equivalent," will benefits be limited to same-sex partners *only*? Even if you apply the theory that opposite-sex partners may marry, thus limiting domestic partner benefits to same-sex partners, this recognition may create resentment among employees with unmarried, opposite-sex partners. Plus, you need to consider state laws that prohibit discrimination based on sexual orientation, marital status, etc. which may prevent employers from treating opposite-sex partners differently from same-sex partners.
- ▶ If benefits will be limited to same-sex partners, will it be further limited to only formally-recognized unions? For instance, in states that allow for it, a Civil Union or Registration of Domestic Partnership.

## Associated Costs

Increased cost is one of the first concerns for employers considering offering - or mandated to offer - Domestic Partnership benefits.

An early study by the Society for Human Resource Management (SHRM) concluded that 80% of employers offering health coverage to domestic partners experienced virtually no difference in health care costs.

More recently, a 2007 Hewitt Associates study concluded that the majority of employers experienced increased costs of less than 1%, and only 5% of employers had increased costs of 3% or more.

(over)

<sup>1</sup> Human Rights Campaign: [www.hrc.org/issues/domestic\\_partner\\_benefits.htm](http://www.hrc.org/issues/domestic_partner_benefits.htm)

<sup>2</sup> "Employee Benefits for Domestic Partners," EBIA/Thomson Reuters, 2009

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- ▶ Once defined, what documentation will be required? Many employers/insurers require some form of documentation: from an affidavit to certification to proof of state or municipal registration. If requiring documentation for domestic partners, also review procedures for recognizing marriage and/or divorce. As in the first bullet (above,) treating opposite-sex partners differently from same-sex partners may result in resentment and/or violation of anti-discrimination laws.

### **Domestic Partners Do NOT Qualify as Spouses for Health Coverage**

Federal law defines “spouse” as a person of the opposite sex who is a husband or wife<sup>3</sup>. Same-sex spouses are not a spouse for federal tax purposes, nor are domestic partners.

Benefits provided for a domestic partner or same-sex spouse who is not a tax dependent (see below) are federally taxable to the employee. Any premium an employer pays on behalf of an employee’s domestic partner/same-sex spouse is subject to “imputed income” to the employee. (State tax laws may vary.)

However, in certain limited circumstances, a domestic partner/same-sex spouse may qualify as a tax dependent under IRC Code § 105(b). Note that this is a proverbial “double-edge sword” for employees and employers alike:

- ▶ On the one hand, if a domestic partner/same-sex spouse satisfies the Qualifying Relative Test under IRC Code § 105(b), they may receive benefits tax-free.
- ▶ Unlike opposite-sex spouses, though, a tax dependent must meet the Qualifying Relative definition for the entire tax year, not just part of it.

Treating all domestic partner/same-sex spouse coverage as taxable may seem like an obvious and simple solution. However, it creates problems for employees when their domestic partners/same-sex spouses are actually tax dependents - because there is *no effective way* for the correction to be made on the employee’s annual Form 1040.

Plus, the IRS has informally indicated that coverage for an individual who is a tax dependent must be provided on a tax-free basis, and it’s up to the employer to inquire whether covered individuals are tax dependents.<sup>4</sup>

### **Clear Communication May Help with Potential Confusion**

Due to the increasing number of same-sex partners formalizing their relationships, the terms “domestic partner” and “spouse” are more susceptible to confusion. Same-sex spouses may take offense to be referred to as a “domestic partner,” for instance.

With the competing issues of providing benefits equally, but unequal tax treatment, it’s important to be clear in your definitions. Helping employees understand the differences will benefit both of you.

<sup>3</sup> DOMA, 1 U.S.C. § 7

<sup>4</sup> ABA Joint Committee on Employee Benefits, Meeting with IRS and Department of Treasury Officials, Q/A-3 (May 8-10, 2008), available at <http://www.aganet.org/jceb/2008/IRSTreas2008.pdf>

## **States Recognizing Same-Sex Marriage or Domestic Partnerships**

**California** – Registered Domestic Partnerships are recognized for same sex couples, and for opposite sex couples when one partner is age 62 or older.

**Connecticut** – same-sex marriages are recognized, both from within state and from other jurisdictions.

**District of Columbia** – Registered Domestic Partnerships are recognized for same sex couples, and same-sex marriages from other jurisdictions are recognized.

**Hawaii** – Reciprocal Beneficiaries are recognized for same sex couples only.

**Iowa** – same-sex marriages are permitted in-state only.

**Maine** – same or opposite-sex Registered Domestic Partnerships are recognized.

**Maryland** – same or opposite-sex Registered Domestic Partnerships are recognized.

**Massachusetts** – same-sex marriage is recognized.

**Nevada** – same or opposite-sex Registered Domestic Partnerships are recognized.

**New Hampshire** – same-sex marriage is recognized.

**New Jersey** – Civil Unions for same-sex couples, and Registered Domestic Partnerships for opposite-sex couples with one partner over age 62 are recognized.

**New York** – recognizes same-sex marriages from other jurisdictions, but does not allow same-sex marriage in-state.

**Oregon** – Registered Domestic Partners for same-sex couples is recognized.

**Rhode Island** – does not prohibit recognition of same-sex marriage from other jurisdictions.

**Vermont** – same-sex marriage is recognized.

**Washington** – Registered Domestic Partnerships for same-sex couples, and opposite-sex couples when one partner is age 62 or older.

**Wisconsin** – Registered Domestic Partnerships for same-sex couples.

