

DOMESTIC PARTNER BENEFITS

The term "domestic partner benefits" refers to employee benefit plans that offer the same or similar benefits as those provided to married couples to nonmarried couples as well. Although the term "domestic partner" is often associated with gay or lesbian couples, it also includes unmarried couples of the same sex. Employers usually do not offer domestic partnership benefits unless employees ask for them, however, an increasing number of employers, in both the public and private sectors, are starting to offer such benefit plans¹. Although domestic partner benefits are increasingly popular, the rules that govern the benefit plans are not uniform and vary between states as well as across companies.

The two states that recognize civil unions, Vermont and Connecticut, "require that all state government employers provide benefits to the dependents of a party to a civil union if the government provides those benefits to married couples."² Because Canada allows same-sex couples to marry in most provinces under the Canadian Modernization of Benefits and Obligations Act, also known as C-23, the country allows same-sex common-law couples to have the same obligations and benefits as opposite-sex common-law couples; this includes distribution of benefits in the workplace.³ However, in the United States, private employers who have benefit plans governed under the federal Employee Retirement Income Security Act of 1974 (ERISA) are not required to offer coverage to civil union partners. Accordingly, "insurers are required to offer policies that include civil union coverage to private employers in Vermont and Connecticut, but private employers and employers in other states may decide who will be eligible to enroll in their plans."⁴

Definition of a Domestic Partner

A domestic partnership is usually understood to mean "two unrelated, unmarried adults who share the same household."⁵ In order to qualify for domestic partner benefits, employees often need to demonstrate that his or her "eligible partner" meets specific criteria that is defined by the employer.

Participation in domestic partner benefit plans is often limited to those who are in a relationship that is considered to be "committed"—a term that can be defined in many different ways; other domestic partner benefit plans limit participation to same-sex partners. In states that do not recognize civil unions, domestic partners can sometimes have the option to register their partnership. Although this registration does not carry the same legal status as a marriage or a civil union, it can be made a condition of participation in a benefit plan. Other plans require a waiting period, most often six months to one year, before a partner will be eligible to enroll in the benefits plan.⁶ Accordingly, the definition used in many domestic partner benefit plans defines an "eligible partner" as someone who is:

- At least 18 years old
- Not related more closely than would be allowed for a legal marriage under state law
- Sharing a "committed relationship"
- In an exclusive relationship with his or her partner
- Financially interdependent with his or her partner⁷

Covered Benefits

Many domestic partner benefit plans do not offer full health benefits, but offer other minimal and low-cost benefits. Examples include but are not limited to sick leave, relocation expenses, access to company property, and permission to attend company functions.⁸

However, health and medical insurance is often of greater interest to those seeking domestic partner benefits than those benefits that are more commonly offered. An assumption that the cost will be too high is the main hindrance for many employers. However, studies have shown that the increased cost of adding domestic partner coverage to a health insurance plan is often less than many employers anticipate, for many reasons. This is often because participation in domestic partner benefit plans tends to be very low, and the typical employee who participates tends to be younger and healthier than the average employee.⁹ Additionally, this population, due to the fact that they are often partners in same-sex relationships, has a decreased risk that a health insurance plan will have to cover the high costs of pregnancy and childbirth.

Tax Consequences

Federal income tax laws treats domestic partner benefits and benefits offered to married couples differently. Ordinarily, an employee whose spouse obtains benefits must include the cost of those benefits as taxable income. The exception to this is when the employed spouse is claiming the covered spouse as a legal dependent by the Internal Revenue Service (IRS). According to, in order to be considered a legal dependent by the IRS, "a partner must live in the same household as the employee and must receive over half of his or her support from the employee."¹⁰

NOTES

1. National Gay and Lesbian Task Force. (1999). *The Domestic Partnership Organizing Manual for Employee Benefits* (1999), http://thetaskforce.org/reports_and_research/dp_manual (accessed September 20, 2007).

2. D. R. Euben, (2005, August). "Domestic Partner Benefits on Campus." <http://www.aaup.org/AAUP/protect/legal/topics/partners.htm> (accessed September 20, 2007).

3. Canadian Department of Justice, *Civil Marriage Act* (February 2005), http://www.justice.gc.ca/eng/new-nouv/nr-cp/doc_31376.html (accessed September 8, 2007).

4. Euben, "Domestic Partner Benefits on Campus."

5. "Domestic Partner Benefits," FindLaw for Small Businesses, <http://smallbusiness.findlaw.com/employment-employer/employment-employer-benefits/employment-employer-benefits-partner.html> (accessed September 25, 2007).

6. Ibid., 4.
7. Ibid., 3.
8. Ibid.
9. Ibid.
10. Ibid., 7.

Lea Hanson