

City of Portland Equal Benefits Program Frequently Asked Questions for Employers

Health Insurance

Since most contractors are seeking information on the extension of benefits to domestic partners, the information below is written with that focus. However, the concept of equal benefits applies mutually, and where domestic partner benefits exist, spousal benefits must be extended in order to provide equal benefits.

How does the provision of equal health insurance benefits work?

If an employer offers either employer-paid or employee-paid health insurance coverage to the spouses of its employees, in order to provide equal benefits, the employer must also offer health insurance coverage to the domestic partners of its employees. Where health insurance coverage is available for the children of employees' spouses (such as step children), such benefits must be extended to the children of employees' domestic partners.

How will offering domestic partner benefits affect the cost of my company's health plans?

Domestic partner health insurance has been offered since 1982. The actuarial data collected since 1982 show that neither claims experience nor enrollment rates (see below) create a significant increase in expenses.

What are expectations for domestic partner enrollment rates?

Enrollment rates for domestic partner health insurance are low. When employers provide medical insurance for both same and opposite sex domestic partners of their employees, there is an average enrollment rate of three to four percent (3-4%); when only same-sex coverage is provided, the enrollment rate is often less than one percent (1%). This is true for several reasons. Some employees in same-sex relationships are reluctant to disclose their sexual orientation because of the possibility of discrimination by their employer or coworkers. Also, there is a financial disincentive created by the fact that tax laws treat the value of the insurance premium paid by the employer for domestic partner coverage as taxable income to the employee. (This is not true for spousal insurance premiums, where no taxable income is created and employees pay for spousal insurance premiums with pre-tax dollars.) The imputed income associated with domestic partner medical insurance can be prohibitive and discourages many employees from electing domestic partner coverage, especially when the domestic partner already has coverage through his or her own employer.

What has been the claims experience with domestic partner benefits?

Claims experience for domestic partner medical insurance is generally the same as—or less than—that for spouses. This is true because there are more childbirth-related medical expenses for spouses than for domestic partners, and these expenses are often quite high. Also, while some people fear that there will be a large number of people with HIV/AIDS enrolling in domestic partner medical insurance, this has not proven true. (In fact, the overall risk of adverse selection has not been borne out in the actuarial statistics.) In addition, the costs associated with covering HIV-related medical claims are no more than those for other major medical expenses, such as heart disease or cancer.

What are the expectations for administrative costs?

When companies look at the administrative costs associated with implementing domestic partner benefits, it is important to emphasize that the changes being made to an employer's benefits plan are to the list of people eligible for a particular benefit, and not to benefit plan structure itself. Some computer modifications may be necessary to capture the imputed income tax associated with domestic partner medical insurance.

How hard is it to find insurance providers willing to offer domestic partner health insurance?

It is getting easier for employers to find insurance providers willing to provide domestic partner health insurance. Now that actuarial data is available to demonstrate the absence of added risk, more providers are entering this market. In Oregon, 8 insurers cover 99% of the small employer group market and 90% of the large employer group market. All of these 8 companies will offer domestic partner health insurance by July 1, 2007; 4 already do with no additional surcharge.

What if my insurance provider wants to add a surcharge to my plan in order to include domestic partners?

When the concept of domestic partners benefits was new, insurance providers had very little actuarial data upon which to assess the risk they would be exposed to in extending coverage to domestic partners. To compensate for this unknown risk, insurance companies sometimes add a small surcharge (0.5-5.0%) to the group rate. Today, with almost two decades of actuarial information available, there is little justification for the imposition of a surcharge.

Can I offer different plans to spouses and domestic partners?

To offer equal benefits to the spouses and domestic partners of employees, the benefits offered must be the same. For instance, if an employer gives the spouses of its employees the option to choose between an HMO plan or a PPO plan, but only offers the HMO option to domestic partners, the provision of benefits would not be equal. Likewise, where dental and vision coverage is available to spouses, it also must be available to domestic partners.

Is continuation coverage available to domestic partners?

No. The law governing the continuation of health insurance coverage for employees, their spouses and dependents does not require such coverage for domestic partners.

What about retiree health benefits?

As with other health coverage, any retiree health benefits offered to an employee with a spouse must also be offered to an employee with a domestic partner. This includes the domestic partner's ability to continue benefits in the event the retired employee dies.

How do the "Family Status Change Rules" impact the provision of domestic partner coverage?

The family status change rules set out the various events affecting employees, their spouses or dependents, which allow the employee to make plan election changes, outside of the open enrollment period, to benefits offered through a Section 125 Cafeteria plan. For example, if an employee's spouse loses his or her job, the spouse can be enrolled in the employee's health plan at any time during the plan year. These rules set out the requirements that must be met in order for a Section 125 plan to maintain its pre-tax status. Because domestic partner benefits are offered on a post-tax basis, the Family Status Change Rules do not apply. Employers are free to allow domestic partners to make plan election changes on this same basis as those made by spouses. This remains true under the new Family Status Change Rules, which become effective January 1, 2001, and change what was viewed as an illustrative list of permissible changes into an exhaustive list.

Can pre-tax contributions to a Section 125 Cafeteria Plan be made for medical costs associated with a domestic partner?

Normally the contributions made to a Cafeteria Plan for domestic partner-related expenses will not be eligible for pre-tax treatment. However, where a domestic partner meets the requirements of a tax dependent under the Internal Revenue Code and Tax Regulations governing employer-provided health care benefits, pre-tax contributions are permissible. For more information on the tax treatment of domestic partner benefits, see the Fact Sheet on Taxation, below and consult your tax advisor.

Retirement Plans

Adopting a retirement plan that provides for the equal treatment of employees with spouses and employees with domestic partners is an important part of a City contractor's efforts to end discrimination in the workplace. Since most employers are seeking information on the extension of benefits to domestic partners, the information below is written with that focus. However, the concept of equal benefits applies mutually, and where domestic partner benefits exist, spousal benefits must be extended in order to provide equal benefits.

How does the provision of retirement benefits to employees with domestic partners work?

Some retirement plans specify pay-out options for employees that extend only to spouses. This may include joint and survivor annuities, pre-retirement death benefits, and other forms of distribution. While there are some restrictions imposed by the federal laws that govern retirement plans (discussed below), employers are not prohibited from extending most pay-out options to domestic partners. In fact, many retirement plans are already designed to allow employees to name anyone as a joint annuitant or beneficiary for pre-retirement survivor benefits.

Does the law prevent an employer from providing retirement benefits to domestic partners?

In some instances the law governing retirement plans is very specific in limiting the action that the employer can take. For example, the law states that an employee's retirement benefits may only be assigned to an alternate payee under the direction of a qualified domestic relations order (QDRO). This law was written to protect spouses and dependents in the event of divorce. Unless a domestic partner can obtain a QDRO, an employer may not be able to provide equal benefits.

Another restriction, applying to the distribution of pre-retirement survivor benefits available through a qualified pension or profit-sharing plan, states that unless the benefit is going to a spouse, payment must begin by the end of the year following the employee's death and must be paid in full within five years. A spouse, however, may defer the first annuity payment until the end of the year in which the employee would have turned 70½.

What if providing equal benefits would jeopardize a retirement plan's tax-qualified status?

City Contractors are not required to take any action that would jeopardize their plan's tax-qualified status.

Taxation

What are the tax differences between health care benefits for spouses and domestic partners?

When employers provide health care benefits for the spouse and/or dependents of their employees, the Internal Revenue Code allows the money paid by the employer for these benefits to be excluded from the employee's gross income. (Internal Revenue Code §§105, 106.) No such exclusion exists for benefits given to an employee for his or her domestic partner, or the dependents of a domestic partner. Therefore, the money paid by an employer for health care benefits for an employee's domestic partner and/or the dependents of a domestic partner is income that is taxable.

A provision for Oregon (OAR 150-316.007-(B)) allows some taxpayers who qualify as domestic partners to claim a subtraction from Oregon income. The state's attorneys have interpreted the Oregon Court of Appeals decision in *Tanner v. OHSU* to mean that the value of the benefits is not taxable by Oregon if the person qualifies as a same-sex domestic partner.

For more information visit <http://www.oregon.gov/DOR/PERTAX/faq-domestic.shtml>

Who is responsible for paying the tax?

The employee is responsible for paying the tax on domestic partner benefits. To the extent the law requires the employer to withhold tax on the income paid to its employees, you should consult your tax advisor.

How is the tax calculated?

While there is no Internal Revenue Service (IRS) code specifically addressing this issue, private letter rulings issued by the IRS require that an employer withhold tax from their employees' income on the fair market value of the health benefit paid in excess of the amount paid by the employee for that benefit. For example, at XYZ Co., the cost of the health insurance premium for a domestic partner is \$50.00 per month. The employee pays \$30.00 of this premium, and the employer pays \$20.00. The fair market value to be included in the employee's gross income would be \$20.00, which equals the cost of the premium minus the amount paid by the employee. This is called imputed income. Where the premium rate is difficult to determine, for example where an employer is self-insured, the fair market value may be determined by using the COBRA rate minus any administrative fees.

Can the tax on benefits given to domestic partners be avoided where a domestic partner is considered a dependent for purposes of the tax laws?

Yes. A domestic partner may be considered a dependent for purposes of the tax laws governing employer-provided health care benefits if the domestic partner meets the following criteria:

1. the domestic partner receives over 50% of his or her support from the taxpayer;
2. the domestic partner's principal place of abode is the taxpayer's home; and
3. the domestic partner is a member of the taxpayer's household.

(Please note that a domestic partner cannot be a member of the taxpayer's household if the relationship is in violation of local law.) Where a domestic partner is considered a dependent, the money paid by the employer for health care benefits can be excluded from the employee's gross income. Be sure to consult with your tax advisor.

Can the tax on benefits given to children of domestic partners also be avoided?

If the children of a domestic partner satisfy the requirements of being a dependent (as outlined above), the money paid by the employer for their health care benefits can be excluded from the employee's gross income. (This assumes that the domestic partner's children have not been adopted by the employee.)

What about other taxes, such as FICA and FUTA?

To the extent that the fair market value of domestic partner benefits is considered taxable as income, it also will be treated as wages subject to inclusion in Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) tax calculations.

Can employers deduct the cost of providing domestic partner benefits along with other forms of employee compensation?

Yes. The corporate tax deductions allowed for other benefit plans also are available to employers providing domestic partner benefits. This is because Internal Revenue Code section 162(a) allows employers to deduct all "ordinary and necessary business expenses" associated with employee compensation and does not specify to whom the benefit must be paid in order for the deduction to apply.