

Civil Unions Legalized in Illinois; Implications for Employee Benefit Plans

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The recent legalization of civil unions in Illinois raises implications for employee benefit plans. Employers should take action now to prepare for requests for benefit coverage from employees planning to enter to a civil union with a same-sex or opposite-sex partner once the law takes effect on June 1, 2011.

Employers in Illinois may soon experience an increase in requests for benefits coverage for civil union partners once a law legalizing civil unions for same-sex and opposite-sex partners takes effect June 1, 2011. Signed by Governor Quinn January 31, 2011, the law entitles civil union partners in Illinois to enjoy all of the legal rights and obligations that opposite-sex spouses are entitled to under Illinois law. In addition, Illinois will recognize as a civil union any same-sex marriage, civil union or substantially similar legal relationship entered into in other states. (Ten other states and the District of Columbia currently permit same-sex marriages, civil unions or spousal-equivalent domestic partnerships.)

Employers may want to review their employee benefit plans in preparation for requests for benefits coverage from employees who enter into a civil union. The most common requests for benefits for a civil union partner are likely to be coverage under an employer's medical, dental and vision plans, and survivor annuity coverage under defined benefit pension plans.

Medical, Dental and Vision Benefits

Health Benefits

Employers with insured health plans with insurance contracts issued in Illinois will be required to extend coverage to an employee's civil union partner if the plan provides coverage for other employees' spouses. However, an employer will not be required to extend such coverage if the employer's health plan does not provide spousal coverage (which is relatively uncommon), if the plan is a self-insured health plan (*i.e.*, a plan that pays for benefits out of the company's general assets) or if the plan is insured with an insurance contract issued in a state without a civil union law.

Employers that are required to or that voluntarily extend health coverage to employees' civil union partners will need to amend their health plans, enrollment and other communication materials, and the underlying insurance or stop-loss contracts to provide for this coverage.

Continuation Coverage

Civil union partners are not entitled to continuation coverage under the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) because federal law does not recognize civil unions. However, employers that enroll a civil union partner in the company's health plan may want to permit partners to extend coverage in a manner that is consistent with COBRA coverage. In addition, small employers may be required to offer continuation coverage to same-sex partners pursuant to certain state laws.

Taxation

Employers with medical, dental or vision plans that provide coverage for an employee's civil union partner will need to ensure the employee is properly taxed on these benefits. Employees who enroll a civil union partner in an employer-sponsored medical, dental or vision plan should pay a "married" or "employee plus one" premium to cover the partner in the same way that an employee with an opposite-sex spouse would pay for spousal coverage. Because civil unions are not recognized under federal law, employers must impute income to the employee for federal income tax purposes equal to the fair market value of the coverage given to an employee's partner, unless the partner otherwise qualifies as a "dependent" of the employee pursuant to Section 152 of the Internal Revenue Code or the employer decides to **gross-up** the employee. In addition, the employee may not make pre-tax contributions to a Section 125 cafeteria plan on behalf of a non-dependent partner (*i.e.*, contributions for the civil union partner generally must be after-tax) and may not receive reimbursement for expenses of the non-dependent partner from flexible spending accounts (FSAs), health reimbursement accounts (HRAs) or health savings accounts (HSAs).

However, because civil union partners in Illinois are entitled to all of the rights and benefits as spouses, the value of employer-provided medical, dental and vision coverage is not taxable for Illinois state income tax purposes, and premiums for these benefits may be paid on a pre-tax basis for Illinois state income tax purposes. Employers will need to adjust their payroll systems accordingly.

Retirement Benefits

The Illinois civil union law will not require non-government employers with qualified retirement plans, such as 401(k) and defined benefit pension plans, to extend spousal benefits to civil union partners since these plans are regulated solely by federal law. However, employers that want to provide full parity for civil union partners under these retirement plans may want to consider amending their plans as described below.

Defined Contribution Plans

Employers that want to provide full parity in benefits for civil union partners under a defined contribution plan may want to consider two changes to their plans that can be made without any additional cost to the employer. First, employers can amend their plans to identify civil union partners as default beneficiaries for employees who fail to

designate a beneficiary or whose beneficiary predeceases them. A second change that employers may want to consider is to allow an employee to obtain an optional hardship withdrawal for IRS-recognized expenses related to a civil union partner (and perhaps other non-spouse beneficiaries).

Defined Benefit Plans

Federal law requires defined benefit plans to pay a married employee's benefits over the joint lives of the employee and his or her opposite-sex spouse, as well as to provide a preretirement survivor annuity payable to the employee's spouse if the employee dies before his pension benefit commences. Employers that want to provide parity in benefits for civil union partners under their defined benefit plans may want to amend their plans to permit employees to elect an annuity that is payable over the joint lives of the employee and his or her civil union partner. In addition, employers may want to allow civil union partners to receive a death benefit if the employee dies before retirement. Adding additional death benefits to defined benefit plans can be expensive at first blush; however, many large companies have converted their traditional defined benefit plans into so-called "hybrid plans," such as cash balance plans or pension equity plans, where the participant's benefit can be paid in a lump sum. In those types of plans, revising the death benefit to cover civil union partners or any other designated beneficiary may not increase the cost of the plan significantly.

Other Benefits

Employers can choose whether to extend other types of benefits to an employee's civil union partner, but Illinois law does not require such extension. Examples of optional benefits include long-term care insurance or home and automobile insurance, which an employer normally can extend to civil union partners without incurring additional costs. Employers may also choose to extend other benefits for which the employer incurs the cost on behalf of civil union partners, such as life insurance, employee discounts, moving/relocation expenses or bereavement and funeral expenses.

What Employers Should Do Now

Because implementing changes to employee benefit plans can often be complex, employers may want to review their current benefit plans to assess their obligations and options with respect to providing benefits to civil union partners once the new law takes effect on June 1, 2011. In addition, employers will need to take steps to understand and prepare for the conflicting federal and state tax consequences of offering certain benefits to civil union partners.

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