

Washington's Expanded Domestic Partnership Law: What Employers Need to Know

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Washington's new domestic partnership law (SB 5688) giving registered domestic partners all the rights and responsibilities of spouses under state law took effect on December 3, 2009. The scope of this law is much broader than previous domestic partnership laws, and employers and insurance companies will have to review their policies to ensure that they are in compliance with the new law. This article describes who qualifies as a domestic partner and which employee benefits are affected by the new law.

Registered Domestic Partnerships

Two types of couples can register with Washington state under the new domestic partnership law: opposite sex couples where one person is over age 62 and same sex couples.

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Both types of couples must meet additional eligibility requirements, including living together and not having another domestic partner or spouse. The law also protects same sex domestic partners who are registered in other states.

Unregistered Domestic Partners

The law does not provide any legal rights to domestic partners that have not registered with a state. However, nothing in the law prevents employers from providing benefits to unregistered domestic partners, and many continue to do so.

Verifying Registration

The law does not address the issue of verification. Pending guidance on this issue, the prevailing view is that verification of registered

partnership status may be required if verification of marital status is required for married couples as a precondition for benefit or leave eligibility. Alternatively, any employer may verify any Washington registered domestic partnership on the Secretary of State's web site: <http://www.secstate.wa.gov/corps/domesticpartnerships/>.

Private Pension and Retirement Plans

Private pension and retirement plans are governed by a federal law, ERISA, that generally preempts any state regulation of those plans.

Employee Life and Health Insurance Policies

Although ERISA generally preempts state regulation of ERISA health and welfare plans, there is one exception: states are allowed to regulate insurance. The Washington State Office of the Insurance Commissioner appears to be treating the law as an insurance regulation, so if a private employer purchases insurance as part of an ERISA health and welfare plan, that insurance is subject to the domestic partnership law. The Insurance Commissioner has interpreted the law to mean that insurance policies "must be administered in a manner that treats registered domestic partners the same as mar-

ried spouses.” Therefore, if any of the insurance policies an employer provides to its employees provide coverage or benefits to married spouses, it must also provide coverage to registered domestic partners. The Insurance Commissioner is not requiring insurers to amend insurance policies, as long as they are interpreting “spouse” to include a registered domestic partner.

Fully Self-Insured ERISA Health and Welfare Plans

Under the ERISA preemption, ERISA employee benefit health and welfare plans that are fully self-funded and do not purchase insurance are not generally subject to state law and thus are likely exempt from domestic partnership regulations relating to employee benefit plans. Pending federal legislation may change this,

so stay tuned.

Governmental and Church Plans

Non-ERISA plans (governmental and church plans) are not subject to the ERISA preemption and therefore are subject to state regulation in most instances. As a result, fully self-insured health and welfare plans are subject to the domestic partnership law if they are governmental or church plans.

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Family Leave

Washington state statutory leaves, like family care leave, family and medical leave, spousal military leave, and domestic violence leave now cover registered domestic partners of employees on the same terms as spouses. Employers must modify their policies and postings regarding these leaves to include registered domestic partners.

Tax Issues

If an employee attempts to enroll his or her domestic partner for health coverage, the employee must state whether the domestic partner meets the requirements under federal tax law to be a dependent of the employee as a “qualifying relative” for healthcare

purposes. If the domestic partner does not meet those requirements, the value of the health coverage must be included in the employee’s taxable income. Pending federal legislation may also change this rule.

COBRA

The new law does not require employers to provide COBRA to registered domestic partners. However, neither state nor federal law prohibits an employer from offering domestic partners a COBRA-like benefit voluntarily.

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