



The Vita Viewpoint Important Information for Decision Makers

Legislative Update: Same-Sex Marriage Recognized in California *Tax Implications on Employee Benefit Plans*

Overview

The California Supreme Court recently overturned the state's ban on same-sex marriage. Effective June 16, 2008, same-sex couples may marry in California, even if they do not live in the state.

This legislative decision affects employee benefit plans and taxation for same-sex married couples in California.

How Does This Affect Health Plans?

Eligibility: Same-sex married couples now have the same rights as opposite sex married couples, thus they are eligible for health coverage under California situated employee benefit plans. Due to existing registered domestic partnership laws in California, there is no change in eligibility for domestic partners who are already registered with the state of California and covered under your plan. However, any non-registered same-sex domestic partners who choose to legally marry will now be eligible for health coverage under employee benefit plans.

Federal Tax Consequences: Tax consequences are consistent with those for registered domestic partners in California. Under federal law, same-sex spouses cannot receive the tax advantages associated with employee benefit plans (that is, tax free benefits) unless the same-sex spouse happens to also meet the IRS definition of a legal dependent for federal income tax purposes. Employers will still need to impute income to the employee. Additionally, employees may not make pre-tax contributions to a Section 125 Cafeteria Plan on behalf of the same-sex spouse and may not receive reimbursement for the expenses of the same-sex spouse from FSAs, HRAs, and HSAs unless the same-sex spouse qualifies as an IRS dependent. While California law now recognizes same-sex spouses, the federal tax law does not.

California Tax Consequences: Employees do not need to be taxed (for California state tax purposes) on the value of employee benefits for their same-sex spouses. Note that payroll systems need to differentiate state and federal taxation for employee benefit costs for same-sex spouses just as is the case for registered domestic partners. As such, the value of employee benefits for same-sex spouses must be taxed to the employee at the federal level, but not at the state level.

Other Issues: Federal COBRA coverage will not be available as the marriage is recognized in California only. Cal-COBRA extension coverage may be available to same-sex spouses. Since Cal-COBRA is a carrier law, not an employer law, employers are advised to confirm specific coverage continuation provisions with each insurance carrier.

Documentation Issues

As outlined in AB 2208, health plans and insurers may request verification of the declaration of a Registered Domestic Partnership ONLY IF the health plan or insurer also requests equivalent proof (marriage license) for spouses. This clarification also applies to same-sex marriages.

How Does It Affect Out of State Employees?

The law applies to all fully insured and HMO insurance contracts issued in California, as well as trust contracts issued to a California employer. It applies to out of state employees who are covered under a contract situated in California. There are no residence restrictions or boundaries to the law.

If a contract is issued out of another state, then that contract is not subject to this law, even if there are California residents covered under that contract.

For questions or additional information, please contact Vita Benefits Group at (650) 968-8811.