



The Vita Viewpoint Important Information for Decision Makers

Recognition of Out-of-State Same-Sex Marriages

Overview

On October 11, 2009 Governor Schwarzenegger signed SB 54 which will become law on January 1, 2010. This new law provides same-sex couples married outside of California with the same core rights and responsibilities available to couples married in California.

The Details

The national debate of same-sex marriage continues to be a hot topic with state voters and courts deciding on whether to extend the right of marriage to same-sex couples. On November 5, 2008, California voters passed Proposition 8, which amended the California state constitution to define marriage as only between a man and woman.

With the passage of SB 54, California law extends, to same-sex couples married outside of California, the core rights and responsibilities of a married couple within California. Due to Proposition 8, out-of-state same-sex couples married after November 5, 2008 will receive these rights without the designation of "marriage".

How Employers Will Be Impacted

There are two areas key aspects of benefits administration in which employers will need to be extra vigilant.

Premium Taxation

Employees with a legally recognized spouse (married in or out of California) or a registered domestic partner can pay their group health premiums before applying California payroll taxes.

The federal government does not recognize same-sex marriages or domestic partner relationships. Therefore the same-sex spouse or domestic partner's premium contribution is subject to federal payroll tax and the fair market value of the of the benefit is considered imputed income and should be taxed appropriately. The IRS offers an exception when the spouse/partner is a tax qualified dependent.

Benefit Eligibility

An employee is eligible to add a new spouse through a "HIPAA Special Enrollment" period within 30 days of marriage. However, as HIPAA is a federal law this special enrollment opportunity does not apply to same-sex couples or domestic partners. Be sure to review your group health carrier's contract to verify whether marriage between a same-sex couple outside of California, or a new domestic partnership, would allow the spouse/partner to be added to the plan as of the date of marriage or partnership.

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