



Law & Policy Group

GRIST

Domestic partner benefits remain popular but present challenges

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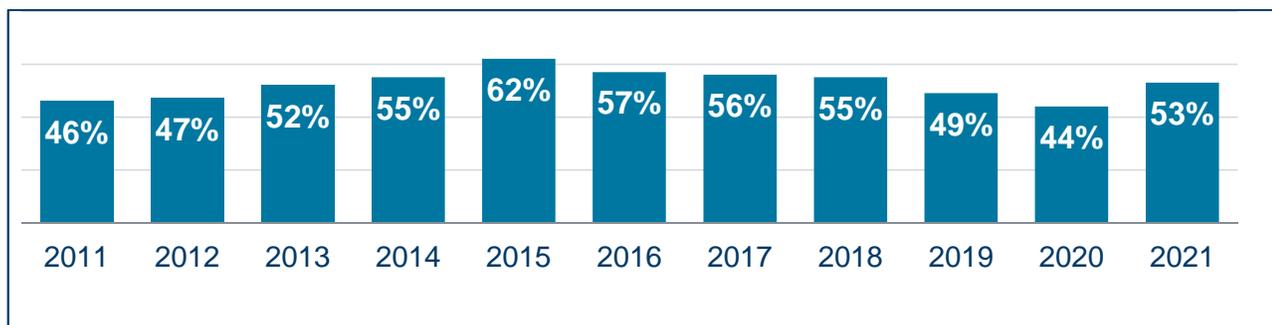
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The US Supreme Court’s 2015 decision in *Obergefell v. Hodges* (135 S. Ct. 2071), which made same-sex marriage legal nationwide, appears to have had little effect on domestic partner benefits. Most states with domestic partnership registries before 2015 continue to provide registrations, and surveys indicate that employers continue to offer domestic partner benefits. Despite the acceptance and prevalence of domestic partner benefits, complex legal, tax, administration and other compliance issues come with the territory. Employers need to understand and effectively communicate these issues to employees with domestic partners. This GRIST summarizes the major issues, provides a tax-dependent flowchart and a domestic partner checklist for employers, and includes two charts summarizing applicable state laws.

Domestic partner benefit practices and issues

Survey. Mercer’s 2021 *National Survey of Employer-Sponsored Health Plans* showed that 53% of employers with 500 or more employees offer domestic partner benefits, roughly the same as in 2014:



Diversity, equity and inclusion (DEI). Every year, the Human Rights Campaign issues the [Corporate Equality Index](#) (CEI), a national benchmarking tool on corporate policies, practices and benefits pertinent to LGBTQ employees. Domestic partner coverage is one of the criteria affecting an employer's overall CEI rating. The CEI specifically requires equivalency in same- and different-sex domestic partner medical, family formation, and other benefits, including adoption assistance, fertility coverage, foster care assistance and surrogacy.

Key issues. Beyond those considerations, employers must communicate to their eligible workforce the differences between a spouse and a domestic partner under federal and state laws and apply those differences in administering benefit plan provisions. As discussed later, differences arise primarily in these areas:

- [State recognition](#) of domestic partnerships and other types of relationships, and related insurance coverage mandates for recognized relationships
- [Taxation](#) of benefits (for nontax dependents)
- [HSAs](#) and high-deductible health plans (HDHPs)
- [Other federal laws](#), including continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), unpaid leave rights under the federal Family and Medical Leave Act (FMLA), and military leave protections under the Uniformed Services Employment and Reemployment Rights Act (USERRA)
- [Government-contracting requirements](#) mandating domestic partner coverage
- [Wellness programs](#) for spouses/domestic partners
- [Documentation](#), such as certification of relationship, declaration of tax status or termination of relationship
- [Medicare](#)

State laws

Unrelated adults currently can enter into four types of legal familial relationships in the United States:

- **Ceremonial marriage.** Every state and most countries recognize ceremonial marriages if the spouses have an official document (typically a certificate or license) showing their relationship. Dissolution of a ceremonial marriage requires a divorce decree through a court with jurisdiction.
- **Civil union.** This type of relationship was more common before 2015. States with civil union laws typically require registration for civil union partners to enjoy most, if not all, of the legal rights available to spouses in the state. Those states also address how to terminate a civil union without a divorce decree. For details on domestic partnership/civil union states, see [Appendix A](#).

- **Common-law marriage.** Historically, judicial precedent — not a state statute — has created this type of marriage. A common-law marriage occurs when two people take certain actions. States that allow common-law marriage generally require both spouses to demonstrate a mutual intent to be married, represent to others that they are married and cohabit. A common-law marriage requires a divorce decree through a court with jurisdiction. Under the “full faith and credit” clause ([Art. IV, Sec. 1](#)) of the US Constitution, all states — even ones that don’t allow a couple to lawfully form a common-law marriage within their borders — must recognize common-law marriages established in another state. For details on common-law marriage states, see [Appendix B](#).
- **Domestic partnership.** State law or employer policy typically defines what constitutes a domestic partnership. Most employers will require an affidavit or certification of the domestic partnership and employee notice when the relationship ends. Employers often include registered domestic partnerships and civil unions in defining a domestic partnership for benefit purposes. For details on registered domestic partnership/civil union states, see [Appendix A](#).

Taxation

Taxation and imputed income calculations are the most complex and potentially burdensome administrative tasks associated with domestic partner benefits. Federal law generally views each domestic partner as an unmarried single person. For federal taxes, a domestic partner is a tax dependent eligible for tax-free benefits if certain conditions are met. States without a domestic partner statute usually follow federal law for tax purposes. States with a domestic partner statute typically do not tax the value of domestic partner coverage. For details on tax treatment in domestic partner/civil union states, see [Appendix A](#).

Tax-dependent status

For any beneficiary who is not an employee’s tax dependent, employers must impute the fair market value (FMV) of their contributions for a domestic partner’s coverage as taxable income to the employee. Likewise, any employee contribution for that coverage must be on a post-tax basis (or processed as pretax with imputed income). Imputing income and taxing employee contributions require coordination with payroll and benefit systems to ensure correct reporting on the employee’s [Form W-2](#).

For simplicity, employers might want to treat all domestic partners and their children as nontax dependents. However, [informal IRS guidance](#) says employers “must inquire about whether the covered individuals are dependents to determine the correct amount to report and withhold on with respect to the cost of this coverage.” The [W-2 instructions](#) confirm that an employer can avoid W-2 penalties for incorrectly reported taxable income if the employer acted “in a reasonable manner and took steps to avoid the failure.” Absent any knowledge of contradictory facts, an employer can reasonably rely on an employee’s declaration or attestation that a domestic partner and the partner’s children are the employee’s tax dependents. If possible, employers should collect this documentation when enrolling domestic partners and their children.

Employees can receive tax-free employer health benefits for domestic partners in either of two ways:

- The domestic partner is a “qualifying relative” tax dependent for *health plan purposes* under the Internal Revenue Code (most common).
- The employee claims a *tax exemption* for the domestic partner on a federal tax return (not common).

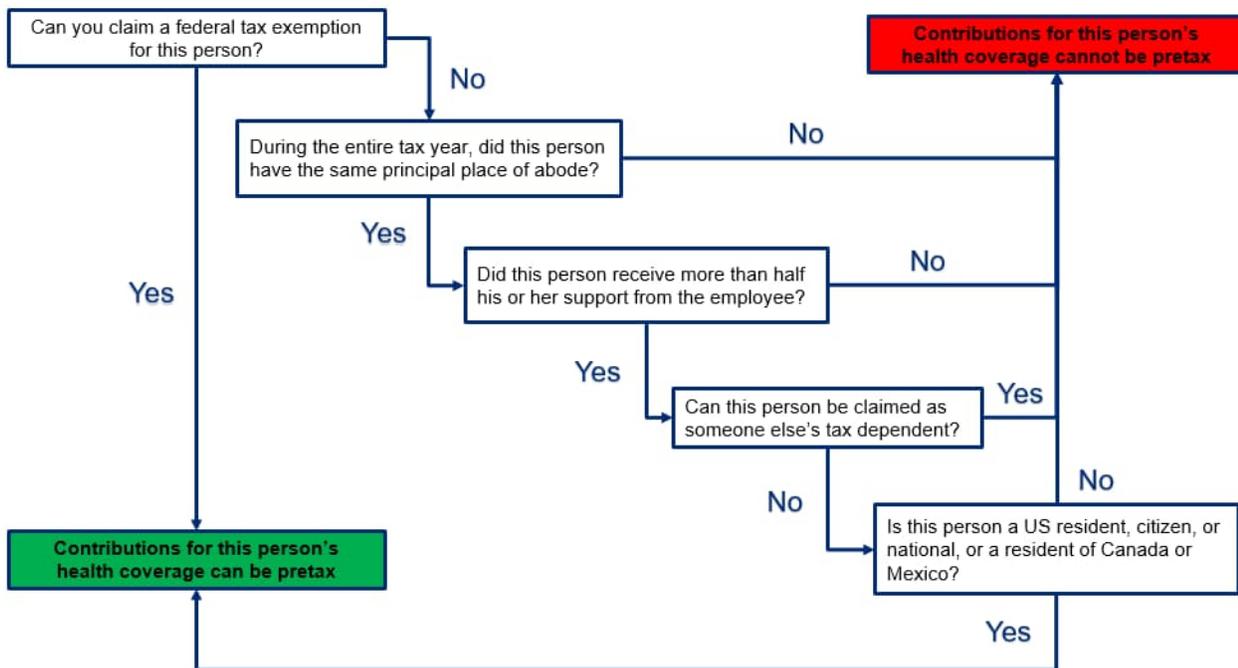
Health plan tax dependent. The domestic partner:

- Must have the same principal place of abode for the entire calendar year
- Must receive more than half of his or her support from the employee
- Cannot be claimed as anyone else’s qualifying child dependent
- Must be a US resident, citizen or national or a resident of Canada or Mexico

Federal tax exemption. The domestic partner must meet the health plan tax dependent test above and have no greater income than the current exemption amount. This proved problematic under the [Tax Cuts and Jobs Act](#), which reduced the exemption amount to \$0 for the 2018-2025 tax years. However, IRS issued [regulations](#) that establish the income limit for purposes of defining a tax dependent. For the 2022 tax year, the limit is \$4,400, per an [IRS revenue procedure](#).

Domestic partner’s children. The same analysis for a domestic partner applies to a partner’s children. Of course, if the employee legally adopts these children, they are automatically tax dependents.

Flow chart. This chart shows how domestic partners (and their children) may qualify for tax-free health coverage:



FMV calculation methods

IRS regulations define FMV as what an individual would pay for a benefit “in an arm’s-length transaction.” IRS has provided no further guidance on how to calculate FMV. Most employers start the calculation by using premium rates for fully insured plans and budgeted rates for self-funded plans. Three rate-based calculation methods are common, in addition to an actuarial method:

- **Rate-increment calculation.** The most common method, this calculation works for self-funded or fully insured coverage. The FMV should remain consistent, independent of the coverage tier actually elected by the employee. This method calculates the difference between:

- Employee-only and employee+spouse coverage = domestic partner FMV
- Employee-only and employee+dependent(s) coverage = domestic partner’s child(ren) FMV
- Employee-only and family coverage = domestic partner and domestic partner’s child(ren) FMV

Example 1. An employer’s health plan has monthly rates of \$500 (employee-only), \$900 (employee+dependent(s)), \$1,100 (employee+spouse) and \$1,500 (family). Employee A elects employee+spouse coverage for himself and his domestic partner. Employee B elects family coverage for herself, her child(ren) and her domestic partner. Employees A and B have the same FMV domestic partner calculation of \$600 (\$1,100 – \$500).

Example 2. Same facts as *Example 1* except that Employee B also covers her domestic partner’s children. The FMV domestic partner calculation is \$1,000 (\$1,500 – \$500). In this example, IRS would likely view the following alternative calculation as unreasonable: The FMV of coverage for the domestic partner and the partner’s child(ren) should be \$600 — the result of removing the nontaxable portion (employee+dependent(s)) from the elected family coverage (\$1,500 – \$900). However, the resulting FMV of coverage for the domestic partner and the partner’s child(ren) (\$600) would be the same as the FMV of coverage for the domestic partner alone (\$600) — an odd result.

- **COBRA rate calculation.** Arguably the most objective method, this calculation works for self-funded or fully insured coverage. The applicable COBRA rate (minus the 2% administration fee) for the corresponding coverage tier of covered nontax dependents serves as a proxy for determining the FMV of the coverage provided to a domestic partner and/or the partner’s child(ren). IRS tacitly endorsed the use of COBRA rates for FMV domestic partner calculations in a 2001 private letter ruling (PLR). (In response to a taxpayer’s inquiry, IRS issues a PLR addressing a specific set of facts under applicable law, regulations and other binding guidance. While a PLR might indicate how IRS would view a similar situation, it does not establish a precedent on which others may rely.)

Example 3. Using the facts and rates in *Example 1* above, the FMV of both Employee A’s and B’s coverage would be \$500 (the COBRA rate, minus 2%, for employee-only coverage) rather than \$600 if using the rate-increment method. In *Example 2*, Employee B’s FMV would be \$900 (the

COBRA rate, minus 2%, for employee+dependent(s) coverage) rather than \$1,000 if using the rate-increment method.

- **Employee-only rate calculation.** This calculation uses the cost of employee-only coverage for each covered nontax dependent. The result can be a very high FMV if more than one child of a domestic partner is covered. This calculation works for self-funded or fully insured coverage.

Example 4. Using the rates above, Employee C covers a domestic partner and her three children. The total FMV of coverage for the domestic partner and the partner's children is \$2,000 per month (\$500 x 4) rather than \$1,000 if using the rate-increment method or \$900 if using the COBRA rate method.

- **Actuarial determination calculation.** Perhaps the most accurate method, this calculation uses actuarial factors (based on available historical plan data and other sources) to set a fixed coverage value for the domestic partner and the partner's children, regardless of elected coverage tier. This method works only for self-funded coverage and may be the most time-consuming to implement.

Taxation approaches

After determining FMV, an employer must adopt procedures for income and employment tax reporting and withholding. For reporting taxable income, two approaches are most common:

- **One-step approach.** All employee contributions are pretax. Then the employer imputes income for the employee and employer portions attributable to coverage of the domestic partner and the partner's children.

Example. The FMV of domestic partner coverage is \$500 per month, of which \$400 is attributable to employer contributions and \$100 to employee contributions. Employee D's \$100 contribution is on a pretax basis; however, the entire \$500 FMV of domestic partner coverage is reported as taxable compensation.

- **Two-step approach.** Employee contributions for the employee and dependent children are pretax. Then:
 1. Employee contributions for coverage of the domestic partner and the partner's children are post-tax.
 2. The employer imputes income for the employer contribution attributable to coverage of the domestic partner and the partner's children.

Example. Using the preceding example, Employee D's \$100 contribution is on a post-tax basis. As a result, only \$400 is reported as taxable compensation.

W-2 reporting

The Affordable Care Act requires reporting the coverage cost for domestic partners and their children on Form W-2, box 12, Code DD, regardless of whether these individuals are tax dependents.

Health savings accounts (HSAs)

HSA rules do not view domestic partners as spouses. As a result, nuances exist related to eligibility, contributions, distributions and W-2 reporting of income.

HSA eligibility. A domestic partner covered under a non-HDHP has no impact on the employee's HSA eligibility, unless the employee is also covered under the domestic partner's plan.

Contribution limits. The HSA contribution limit for an employee who has coverage for a domestic partner is always based on the family coverage tier. In addition, the special rule for married individuals — which requires one combined family contribution limit for employees and spouses, even if they have separate HSAs — does not apply to domestic partners. However, if the domestic partner is the employee's tax dependent, the domestic partner is not HSA-eligible.

Example. Employee E and her domestic partner have HDHP coverage through E's employer. Each person has a separate HSA. E's domestic partner is not her tax dependent. For the tax year, both E and her domestic partner may contribute up to the family limit to each HSA.

Distributions. HSA distributions for the qualified medical expenses of an employee, an employee's spouse and all other tax dependents are tax-free and penalty-free. If a domestic partner or a partner's child is not the employee's tax dependent, any distribution related to that person will be taxable and subject to an additional 20% penalty.

Employer HSA contributions. The value of employer contributions to an employee's HSA are not imputed income and should not be reported under Code W in Box 12 of Form W-2, even if the contributions are higher because of the domestic partner's HDHP enrollment.

Cafeteria plans

Cafeteria plan elections under Section 125 of the Internal Revenue Code (IRC) generally are irrevocable during a plan year and may change midyear only in limited circumstances. Of course, when the domestic partner and the partner's children are not tax dependents, cafeteria plan rules generally do not apply because those benefits are provided outside of the cafeteria plan. Here are some acceptable reasons for a midyear cafeteria plan election change:

- **Adding or dropping the domestic partner (and any children) due to formation or termination of the domestic partnership.** Because a new domestic partner is newly eligible for coverage (not because of a change in marital status), the employee may add the domestic partner. Likewise, when a domestic partnership ends, the partner's coverage may end due to lack of eligibility, assuming timely notification. Unless the domestic partner and/or the partner's children are the employee's tax dependents, neither formation nor termination of the partnership would allow an election change for a health FSA or dependent care FSA.
- **Allowing the employee to drop employer-sponsored coverage to enroll in the domestic partner's employer plan.** The rules allow an employee to make an election change that is due to

and corresponds with a change under another employer plan. This right is not limited to coverage maintained by the employer of a spouse or a dependent.

Example. Employee F's domestic partner G obtains coverage through a new job. F could drop coverage through F's employer so the couple could enroll G's employer coverage.

- **Special enrollment events.** Under the Health Insurance Portability and Accountability Act (HIPAA), if an employee loses other coverage under a domestic partner's plan or the partner's employer stops contributing to the plan, the employee can elect self-coverage as well as coverage for the domestic partner.

Beyond the restrictions on midyear election changes, health FSAs and dependent care FSAs may not reimburse expenses for a domestic partner and the partner's children who are not the employee's tax dependents.

Other laws

Protections for spouses under federal law typically do not apply domestic partners. For example, employees, spouses and dependent children losing coverage due to a divorce or a separation can elect COBRA continuation coverage. However, a domestic partner is not entitled to COBRA continuation coverage when the domestic partnership terminates. A domestic partner also does not have independent election rights under COBRA (but a partner's covered children do because dependent child status is not tied to the IRC definition of a tax dependent).

In practice, most employers offering health benefits for domestic partners voluntarily give them similar or identical rights as spouses. However, employers need to consider how far to extend domestic partner benefits:

- **FMLA.** The FMLA [regulations](#) define a "family member" as a child, spouse or parent only. A domestic partner's children may qualify if the employee stands *in loco parentis* to them — that is, has "day-to-day responsibilities to care for and financially support a child." For *in loco parentis* family members, a biological or legal relationship is not required.
- **USERRA.** When an employee starts military-related leave under the [USERRA rules](#), an employer has an obligation to offer continuation coverage for up to 24 months for the employee and any dependents. This USERRA right does not extend to a domestic partner and the partner's children unless they are the employee's tax dependents.
- **HIPAA.** The law limits the uses and disclosures of individually identifiable health information held by the group health plan. This information is called protected health information (PHI). The PHI of covered domestic partners and their children cannot be used for employment-related purposes, without the person's written authorization.
- **Other laws.** An employer should consider whether to voluntarily align domestic partner benefits with other mandated benefits under state or local law, particularly related to leave. However, many states

with mandated benefits do not give employers a choice and include domestic partners within the scope of the law. For example, New York does not provide domestic partner registrations but includes domestic partners within its [paid family leave law](#).

Government contracting

Domestic partner coverage requirements may arise in an employer’s normal course of business. Some state and local governmental contracts require domestic partner benefits through an “equal benefits ordinance.” Contractors typically must agree to these terms.

For example, the city and county of San Francisco has the [12B Equal Benefits Program](#), which requires contractors to administer benefits equally to registered domestic partners and spouses. Contractors must provide documentation and complete a declaration form. Compliance is subject to audit.

This chart is a noncomprehensive list of jurisdictions with an equal benefits ordinance.

Jurisdictions with equal benefits ordinances	
State	<ul style="list-style-type: none">California
Localities	
California	<ul style="list-style-type: none">BerkeleyLos AngelesLong BeachOaklandSacramentoSan Mateo County
Florida	<ul style="list-style-type: none">Broward CountyMiami Beach
Minnesota	<ul style="list-style-type: none">Minneapolis
Pennsylvania	<ul style="list-style-type: none">Philadelphia
Washington	<ul style="list-style-type: none">King CountyOlympiaSeattleTumwater

Source: <https://www.hrc.org/resources/equal-benefits-ordinances>

Wellness programs

Employers typically include domestic partners in wellness programs to the same extent as spouses. Employers that offer wellness incentives must comply with rules under [HIPAA](#), the [Americans with](#)

[Disabilities Act](#) and possibly the [Genetic Information Nondiscrimination Act \(GINA\)](#). Application of GINA rules to domestic partners is not entirely clear.

Documentation

[ERISA](#) requires welfare benefit plans to establish and maintain a written plan document, which presumably must include eligibility requirements. [ERISA regulations](#) set forth the minimum content for the summary plan description (SPD), including the “plan's requirements respecting eligibility for participation and for benefits.” Employers should review these and related benefit documents to ensure that domestic partner benefits are adequately described. Finally, if domestic partners are entitled to other benefits (like FMLA or USERRA leave), those policies should make partners' eligibility clear.

Medicare

Medicare secondary-payer (MSP) rules require employer-sponsored health coverage for current employees to pay claims before Medicare. This requirement applies differently, depending on the reason for Medicare coverage: age 65 or older, disability, or end-stage renal disease (ESRD).

For age-based Medicare, the MSP rules apply to employer-sponsored coverage for only the employee and the employee's spouse but not a domestic partner. The MSP rules do not apply to employers with fewer than 20 employees.

Example. Employee H and H's domestic partner I are both age 66. H and I have coverage through H's employer, which has 50 employees. The employer-sponsored coverage will be primary for H but secondary for I.

For disability- and ESRD-based Medicare, the MSP rules apply to employer-sponsored coverage for the employee and family members. [HHS guidance](#) confirms that domestic partners are family members. Note that for ESRD-based coverage, Medicare is primary after the first 30 months, regardless of whether the employer-sponsored coverage is based on current employment status. For a disability- and ESRD-based Medicare, the MSP rules exempt employers with fewer than 100 employees.

Example. Employee J and J's domestic partner K have coverage through J's employer. K has disability-based Medicare. The employer-sponsored coverage will be primary for K.

Domestic partner checklist for employers

The checklist starting on the next page has some key questions that employers must answer when providing domestic partner benefits.

Question	Considerations
How will you define a domestic partner?	<ul style="list-style-type: none"> • Consider how to define domestic partner partnership; the typical definition includes: <ul style="list-style-type: none"> – Minimum age of 18 – Common residence for a minimum period and intent to cohabitate indefinitely – Joint responsibility for basic living expenses – Capability of consenting to the partnership – No marriage, legal separation or other domestic partnership – No blood relationship that would prevent marriage in the resident state – Relationship not established solely to obtain employer-sponsored benefits • If using a customized domestic partner definition, create a certification form and a process for collecting it during domestic partner enrollment. • Consider opening eligibility for registered domestic partnerships, civil unions and/or common-law marriages. • Establish process for documentation of the relationship's status. • Consider restricting domestic partnership eligibility to states and localities that have domestic partner registries and an insurance law, an ordinance, or a governmental contract requiring coverage of registered domestic partners. • Consider whether to allow domestic partnerships involving same-sex or opposite-sex couples or both, unless state law addresses this issue.
How will you document a domestic partnership?	<ul style="list-style-type: none"> • Options include: <ul style="list-style-type: none"> – Certification only – Certification and/or proof of state registration – Attestation as part of enrollment but no documentation required • Follow the same process used for adding spouses to the plan. Keep in mind that California prohibits requiring proof of domestic partnership registration if similar proof is waived for marriages.
What benefits will you extend to domestic partners?	<ul style="list-style-type: none"> • While medical, dental and vision coverage are typical offerings, consider including other benefits like dependent life and/or dependent accidental death and dismemberment (AD&D) insurance. • Consider fringe and other benefits (FMLA, USERRA and other leaves). • Confirm eligibility terms with vendors and insurers, and update plan documents, SPDs, and other communications accordingly.

Question	Considerations
Will you allow cafeteria plan election changes to apply to domestic partners (and their children)?	<ul style="list-style-type: none"> Note that the typical answer is yes. Keep in mind that nontax dependent coverage changes are not subject to the cafeteria plan rules. Consider whether the cafeteria plan document and any related communications about election changes need corresponding updates.
Will domestic partners have the same rights as spouses? How about domestic partners' children?	<ul style="list-style-type: none"> Consider the impact of providing more inclusive benefits on DEI, employee relations, and attraction and retention. Weigh the goal of equality/equivalence against the potential liability of extending rights to individuals who are not protected by applicable law. Determine whether to offer domestic partners the same wellness incentives available to spouses — as typically done. Decide whether to include a domestic partner's child in the definition of an eligible dependent child. Determine with the COBRA vendor whether domestic partners will be merely eligible for continuation benefits or will also have independent election rights.
What policy or processes will you use to prevent fraud or abuse?	<ul style="list-style-type: none"> Include in certification forms a clear statement of repercussions for any fraudulent activity related to plan enrollment. Comply with HIPAA's ban on tracking a domestic partner's claims history.
How will you determine whether a domestic partner (or any of the partner's children) is the employee's tax dependent?	<ul style="list-style-type: none"> Consider whether to use a separate tax declaration for this purpose or to include in the domestic partnership certification. Keep in mind that existing law prohibits assuming all domestic partners (and their children) are or are not tax dependents. Consider adding a tax declaration or an attestation of tax status as part of initial and annual enrollment processes.
Which FMV calculation method will you use for domestic partners (and their children) who aren't tax dependents?	<ul style="list-style-type: none"> Rate-increment calculation is most common method, but more complicated. COBRA rate calculation is arguably the most objective method. Employee-only rate calculation is easier but often results in a higher FMV, especially if a domestic partner's children are covered. Actuarial determination is arguably the most accurate but probably the most time-consuming method.

Question	Considerations
What approach will you adopt for reporting the FMV of coverage for domestic partners (and their children) who aren't tax dependents?	<ul style="list-style-type: none"> • One-step approach: Report all employee contributions as pretax but include employee and employer portions of domestic partner coverage as taxable income. • Two step approach: <ul style="list-style-type: none"> – Separate employee contribution into pretax and post-tax. – Report employer contribution for domestic partner coverage as taxable income. • If imputed income has not been handled properly, consider strategy for correcting and correctly reporting FMV of domestic partner coverage on Form W-2.
How will you document domestic partner benefits?	<ul style="list-style-type: none"> • Update benefits materials, including any existing domestic partner communications, the benefit plan SPD, ERISA and Section 125 plan documents, insurance/benefit booklets, enrollment guide, and processes for obtaining certifications, tax declarations and termination notices. • Consider supplementing the SPD or other plan materials with a separate domestic partner benefits guide that highlights and communicates all aspects of domestic partner coverage. Update the guide as needed, and provide it as part of annual enrollment.

Related resources

Non-Mercer resources

- [FAQs for registered domestic partners and individuals in civil unions](#) (IRS)
- [Form W-2 reporting of employer-sponsored health coverage](#) (IRS)
- [Publication 501](#), Dependents, standard deduction, and filing information (IRS)
- [Publication 969](#), HSAs, FSAs and other tax-favored health plans (IRS)
- [Treas. Reg. § 1.61-21](#), Fair market value of fringe benefits
- [Your guide to who pays first](#) (Centers for Medicare and Medicaid Services, September 2021)
- [State civil union and domestic partnership statutes](#) (National Conference of State Legislatures, March 10, 2020)
- [Information Letter 2016-0012](#) on taxation of health coverage for domestic partners (IRS, Feb. 17, 2016)

- [Information Letter 2016-0008](#) on taxation of health coverage for domestic partners (IRS, Feb. 17, 2016)
- [PLR 1415011](#) on HRAs and nontax-dependent domestic partners (IRS, April 11, 2014)
- [PLR 200339001](#) on taxation of medical and dental benefits for domestic partners (IRS, June 13, 2003)
- [PLR 200108010](#) on FMV calculation of domestic partner coverage (IRS, June 23, 2001)

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- [Common-law marriage raises issues for employer benefits](#) (March 3, 2020)

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Appendix A: State domestic partnership/civil union chart

State	Summary	Insurance mandate?	Contributions exempt from state tax?
California	<ul style="list-style-type: none"> Domestic partnerships Domestic partner registry 	Yes <ul style="list-style-type: none"> Must provide medical/dental/vision coverage under fully insured/HMO plans for any registered domestic partner and eligible dependents. Cannot ask for proof of registered domestic partnership, unless proof is also requested for marriages. 	Yes
Colorado	<ul style="list-style-type: none"> Civil unions Committed partnership registry 	Yes	No
Hawaii	<ul style="list-style-type: none"> Civil unions Domestic partner or civil union enrollment 	Yes	Yes
Illinois	<ul style="list-style-type: none"> Civil unions Civil union certificate 	Yes	Yes
Maine	<ul style="list-style-type: none"> Domestic partnerships Domestic partner registry 	Yes	No
Nevada	<ul style="list-style-type: none"> Domestic partnerships Domestic partnership filing 	No	N/A — no state income tax

State	Summary	Insurance mandate?	Contributions exempt from state tax?
New Jersey	<ul style="list-style-type: none"> • Same-sex civil unions • Civil union FAQs • Domestic partnerships formed on or before Feb. 19, 2007, unless both partners are ages 62 or older • Domestic partnership registration 	Yes for both civil unions and domestic partnerships	Yes for both civil unions and domestic partnerships
Oregon	<ul style="list-style-type: none"> • Domestic partnerships (same-sex only) • Domestic partner registration 	Yes	Yes
Pennsylvania	<ul style="list-style-type: none"> • No state recognition of domestic partnerships or civil unions, but benefit tax exclusion may apply • Philadelphia domestic partner registration under a 1996 Executive Order 	No	Yes
Rhode Island	<ul style="list-style-type: none"> • Same-sex civil unions formed before Aug. 1, 2013 • RI civil union information 	No	Yes
Vermont	<ul style="list-style-type: none"> • Same-sex civil unions formed before Sept. 1, 2009 Vermont civil union certificate 	Yes	Yes
Washington	<ul style="list-style-type: none"> • Domestic partnerships, but only if one partner is age 62 or older • Domestic partner declaration 	Yes	N/A — no state income tax
Washington, DC	<ul style="list-style-type: none"> • Domestic partnerships • Domestic partner registry 	No	Yes

Appendix B: State common-law marriage chart

State	Common-law marriage requirements	Resources
Colorado	<ul style="list-style-type: none"> • Mutual consent of parties • Both parties age 18 or older • No legal impediment to marriage 	<ul style="list-style-type: none"> • Common-law marriage resources (Department of Public Health and Environment) • Sample affidavit (Department of Public Health and Environment) • CO Rev. Stat. § 14-2-109.5
Iowa	<ul style="list-style-type: none"> • Intent and agreement to be married • Continuous cohabitation • Public declarations that the parties are husband and wife 	<ul style="list-style-type: none"> • Legislative guide to marriage law
Kansas	<ul style="list-style-type: none"> • Both parties age 18 or older • Both parties consider themselves married and publicly present themselves as married • No minimum cohabitation period required 	<ul style="list-style-type: none"> • KS Stat. § 23-2502
Montana	<ul style="list-style-type: none"> • Both parties age 18 or older, but if ages 16–18, must have parental consent • Cohabitation • Professing to be husband and wife • No legal impediment to marriage 	<ul style="list-style-type: none"> • Affidavit (MT courts) • MT Code § 40-1-403
Oklahoma	<ul style="list-style-type: none"> • Consent to be married as evidenced by: <ul style="list-style-type: none"> – Cohabitation – Actions consistent with a spousal relationship – Community recognition of the marital relationship – Declarations by the parties 	<ul style="list-style-type: none"> • Standefer v. Standefer, 26 P.3d 104 (OK Sup. Ct. 2001)
Rhode Island	<ul style="list-style-type: none"> • Capacity of both to marry • Serious intent of both to enter into a mutual husband-wife relationship • Community belief that parties are married 	<ul style="list-style-type: none"> • Luis v. Gaugler, 185 A.3d 497 (RI Sup. Ct. 2018)

State	Common-law marriage requirements	Resources
Texas	<ul style="list-style-type: none"> Both parties' signatures on a form provided by a county clerk, or both meet these conditions: <ul style="list-style-type: none"> – Agree to be married – Cohabit – Represent themselves to others as married 	<ul style="list-style-type: none"> Informal marriage declaration form (optional) (Department of Health Services' Vital Statistics Section) TX Fam. Code § 2.401
Utah	<ul style="list-style-type: none"> Both parties of legal age and capable of consent Both parties legally capable of entering a solemnized marriage Cohabitation Mutual assumption of marital rights, duties and obligations Public presentation as married Uniform and general reputation as husband and wife 	<ul style="list-style-type: none"> Petition to recognize a relationship as a marriage (UT courts) UT Code § 30-1-4.5
Washington, DC	<ul style="list-style-type: none"> Mutual and present agreement of both parties to enter into matrimony Cohabitation 	<ul style="list-style-type: none"> US Fidelity & Guaranty Co. v. Britton, 369 F.2d 249 (DC Cir. 1959)