PPi BENEFIT SOLUTIONS

DOMESTIC PARTNER BENEFITS: A GUIDE FOR EMPLOYERS

This Guide for Employers is meant to serve as a guide to domestic partner benefits issues at a high level. Employers with specific questions should work closely with their benefits consultants to develop thoughtful domestic partner recognition criteria and coverage strategies and to implement effective employee communications and regulatory compliance practices.

Domestic partnerships refer to committed interpersonal relationships between two unmarried adults that grant some of the same rights, benefits and protections available to married couples. Although there are currently no federal laws that require employers to recognize an employee's domestic partner or the domestic partner's children as family members in connection with job- or benefits-protected leave of absence provisions, or to provide health benefits to domestic partners and their children (referred to collectively as "domestic parties" in this document), there are several state laws – most notably Paid Family Leave laws – that require employers to recognize domestic parties as family members for certain types of employee benefits. Consequently, it is increasingly important for many employers, including those that do not offer domestic partner health coverage, to establish criteria for recognizing domestic partnerships in order to remain compliant with state laws and in connection with the administration of personnel policies that recognize domestic parties as family members. For a comprehensive state-by-state overview of statutory disability and leave programs, including possible wage withholding and notice requirements as well as provisions for paid time off for qualified reasons and family members, see the PPI publication **Quick Reference Chart: Statutory Disability and Paid Family & Medical Leave Programs**.

Employers that also choose or are required to offer health coverage to domestic parties have several additional compliance and administrative issues to consider beyond recognition of an employee's domestic partnership. These include ensuring that plan documents accurately reflect eligibility criteria, communicating plan eligibility criteria to employees, imputing income associated with the cost of domestic party health coverage, and ensuring that contributions to and distributions from any tax-advantaged accounts, such as health or dependent care flexible spending accounts (FSAs), health savings accounts (HSAs), and health reimbursement arrangements (HRAs), are made according to IRS rules.

The topics addressed in the Guide appear in the order shown below.

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1. DEFINITION OF DOMESTIC PARTNER

Absent a uniform federal definition of domestic partner, states and local municipalities that formally recognize domestic partners (whether exclusively for purposes of leave of absence policies or also for health benefits eligibility) have established different qualifications for domestic partnerships. The qualifications generally share certain common elements: The parties are in a committed interpersonal relationship with each other and intend to remain so indefinitely; neither party is married to or in a domestic partnership with someone else; both parties are at least 18 years of age and mentally competent to consent to a domestic partnership; the parties are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which the parties reside. However, the state- or municipality-specific qualifications also encompass disparate criteria regarding cohabitation (which may or may not be required), financial dependence or interdependence (which may or may not be required), and applicability to both same-sex and different-sex relationships.

Given the variety – and in many cases the absence – of domestic partnership definitions at the state or local level, employers generally have discretion to define domestic partners as they choose, provided their definition is not more restrictive than the prevailing definition in a state or municipality where the employer operates. Employers are encouraged to confirm official governmental definitions of domestic partnership on state and municipal websites or consult with legal counsel as needed to ensure that their domestic partnership qualifications are not more restrictive than the prevailing definition in a state or municipality where the employer operates. Employers that are subject to the terms of a collective bargaining agreement (CBA) should also confirm that their definition of domestic partner is consistent with any applicable CBA terms and conditions.

2. CERTIFICATION OF DOMESTIC PARTNERSHIP

There is no federal certification of a domestic partnership and no federal requirement that employers certify a domestic partnership in connection with the administration of personnel policies or employee benefits plans. On the state and local level, governmental agencies that recognize domestic partnerships for purposes of state or local benefits entitlements generally consider an affidavit of domestic partnership, as established by their own state, county or city clerk's office, to constitute proof of the relationship and adequate documentation when applying for certain state or municipal benefits. Employers generally rely on evidence of any such domestic partner registration (regardless of country, state, or municipality of origin), or on a domestic partnership certification issued by another employer, as sufficient evidence of a domestic partnership for purposes of administering the employer's leave of absence and employee benefits plans.

Because government-issued certificates of domestic partnership are not uniformly available in all states or municipalities, and because employers may not wish to rely on domestic partnership certification criteria established by a different employer, employers that operate in jurisdictions that do not have domestic partner registries should establish alternative criteria for recognizing domestic partnerships and should ensure that the domestic partner certification practices are reasonably consistent with those for other family members (such as spouses and children). For example, if the employer allows married employees to self-certify their marital status (including the dissolution of a marriage), the employer should likewise allow employees in domestic partnerships to self-certify their domestic partnership status (including the dissolution of a domestic partnership). The **Model Certification of Family Relationships** (Appendix A) offers an appropriate means of recognizing a range of family relationships, including domestic partnerships, for purposes of administering an employer's personnel policies and benefits plans.

The IRS generally allows employers to rely on employee attestation for dependent status, absent any reason to doubt the attestation. Employers can require additional documentation from employees regarding dependent status as they see fit. In order to retain the right to rescind coverage based upon a showing of fraud or intentional misrepresentation of a material fact, employers should ensure that employee communications about dependent status include clear, strong language regarding the consequences of covering ineligible individuals.

Employers that require employees to submit certification documents in connection with leave administration practices and/or benefits enrollments should specify the acceptable documents and should note any document submission requirements in the plan document (per the eligibility terms), on the relevant claim or benefits enrollment forms, and in the employee handbook, benefits guide, or other employee-facing communications as applicable. The **Model Certification of Family Relationships** form allows employers to note any document submission requirements on that form.

Employers should ensure that any certification documents are handled according to the employer's policies governing personal and confidential employee information, and documents should be maintained according to the employer's record retention policies.

3. LEAVE OF ABSENCE POLICY CONSIDERATIONS

The definitions of spouse, son, and daughter under the federal Family and Medical Leave Act (FMLA) do not include domestic parties. Consequently, there is no federal requirement to provide FMLA-qualified job- or benefits-protected leaves of absence in connection with an employee's domestic parties, whether for reasons of military deployment, serious illness/injury, or in connection with a domestic partner's birth, adoption, or foster placement of a child when the employee is not otherwise recognized as the child's legal parent or guardian.

On the state level, several states recognize domestic parties as eligible family members in connection with state leave laws, such as Paid Family Leave laws that require employers to provide job- and/or benefits-protected leaves of absence to employees for a range of qualifying reasons. Employers should confirm that their recognition of domestic parties as family members in connection with their leave of absence policies complies with the requirements of the state or municipality in which they operate.

To the extent that employers may offer enhanced (non-mandatory) leave of absence provisions that recognize domestic parties as family members (including, for example, non-mandatory salary continuation provisions in connection with parental leave or bereavement leave), employers should ensure that any related policy documents accurately reflect such recognition.

4. ELIGIBILITY FOR DOMESTIC PARTNER HEALTH COVERAGE

The Affordable Care Act (ACA) requires applicable large employers (ALEs) to provide minimum essential health coverage to a certain percentage of their full-time employees (those working 30 or more hours per week) and the children of those employees up to age 26. (See the PPI publication **ACA: Employer Mandate Penalties and Affordability** for information regarding employer requirements under the ACA.) However, federal law (notably the ACA and ERISA) does not require employers to offer spousal health coverage, nor does it require employers to offer domestic partner health coverage. Employers that offer spousal coverage are not also required to offer domestic partner coverage (and vice versa). Further, whereas federal law requires ALEs to offer coverage to children up to age 26, it does not require ALEs to offer coverage to a domestic partner's children.

Federal law defines a "spouse" as an individual who is lawfully married to another individual. Since the legalization of same sex marriage throughout the US in 2015, legal marriages can be between same sex or different sex individuals. Because federal law does not recognize a domestic partner as a spouse, plan documents that reference spouse as an eligible dependent are understood not to include domestic partners unless the plan documents also explicitly reference the eligibility of domestic partners. Employers that offer health coverage to domestic parties, whether at their sole discretion or as required by state law or pursuant to a collective bargaining agreement, should ensure that the eligibility terms are clearly memorialized in the plan documents and summary plan descriptions (SPDs) and are properly communicated to employees. (See the PPI publications **Required Group Health Plan Notices Overview** and **Required Group Health Plan Notices Chart** for specific information about SPD distribution requirements.)

While federal law gives employers broad discretion to grant or deny domestic partner health coverage, employers must also consider state laws. Most states, including those that formally recognize domestic partnerships for purposes of leave administration, do not require employers to offer health coverage to domestic parties. There are some notable exceptions. For example, employers that purchase fully insured plans that cover employees in California and Washington, D.C., are subject to the carriers' requirement to include coverage for the registered domestic partners of those employees regardless of the situs state of the insurance contract, even if the employer's principal place of business and the majority of employees are not located in these jurisdictions. Self-insured plans are generally exempt from these state laws.

Coordination of Benefits Between Employer Health Plan and Medicare: For employers with twenty or more employees, Medicare Secondary Payer (MSP) rules provide that the employer's health plan is the *primary* payer of benefits for Medicare-enrolled active employees and their dependents (other than enrolled members with end-stage renal disease), including an employee's Medicare-enrolled spouse. Conversely, the employer's health plan is the *secondary* payer for an employee's Medicare-enrolled domestic partner, assuming the domestic partner is otherwise enrolled as a dependent on the employee's plan. Employers should note that an employee's enrolled domestic partner will be subject to a Medicare late enrollment penalty and may experience gaps in coverage (because the group health plan will pay as secondary even if the individual isn't actually enrolled in Medicare) if the domestic partner delays enrollment in Medicare beyond their initial enrollment period.

For employers with fewer than twenty employees, MSP rules provide that Medicare is the *primary* payer, and the employer's group health plan is the secondary payer, for all employees and dependents, including spouses and domestic partners. Consequently,

all Medicare-eligible employees and dependents who are enrolled in the employer's group health plan, including spouses and domestic partners, must enroll in Medicare as of their initial enrollment period in order to avoid Medicare late enrollment penalties and possible gaps in coverage.

While it is important for employers to recognize how the MSP rules affect coordination of benefits between their group health plans and Medicare, employers should not advise individual employees regarding whether they should enroll in Medicare and should instead direct employees to contact the Centers for Medicare & Medicaid Services about their specific circumstances.

Note Regarding Tax-Dependent Domestic Parties: Domestic parties who qualify as an employee's tax dependents under federal law may be eligible for health coverage according to the terms that otherwise apply to tax dependents. See IRC Section 152 for information regarding the "qualifying child" and "qualifying relative" tests for tax dependency. Unless noted otherwise, references to domestic parties in this white paper assume that the domestic parties are not the employee's tax dependents under federal law. Employers that offer health coverage to domestic parties should request evidence of the domestic party's tax dependent status (such as a federal tax return that identifies the tax-dependent party), as applicable, to ensure proper administration of the tax consequences that otherwise apply to coverage of domestic parties. Tax dependent status for state income tax purposes varies by state. Employers should review state payroll tax provisions as needed and may wish to consult with a tax advisor to ensure proper payroll administration of domestic party coverage at the state level.

5. HIPAA SPECIAL ENROLLMENT RIGHTS CONSIDERATIONS

Under the Health Insurance Portability and Accountability Act (HIPAA), a special enrollment right allows employees and/or dependents who have experienced certain qualifying life events to enroll in an employer-sponsored group medical plan during the plan year (other than during the annual open enrollment period). Special enrollment rights can be triggered by two types of events: those that arise from the employee's or dependent's loss of eligibility for other coverage (including coverage under another employer's health plan) or loss or gain of eligibility for coverage under Medicaid or a state Children's Health Insurance Program (CHIP), and those that arise from certain life events (marriage, birth, adoption, or placement for adoption). (See U.S. Department of Labor *FAQs on HIPAA Portability and Nondiscrimination Requirements for Workers* for a detailed discussion of special enrollment rights.) Employers that offer health coverage to domestic parties should be aware that loss of coverage special enrollment rights protect an employee's right to add a domestic party due to the relevant loss of coverage event; by contrast, however, life event special enrollment rights do not grant employees the right to enroll a newly qualified domestic partner outside of the employer's open enrollment period, as attaining domestic partnership status is not comparable to marriage for purposes of triggering a HIPAA special enrollment right.

Employers can, at their discretion and as permitted by the carrier contract (for fully insured plans) or stop-loss carrier (for self-insured plans), permit employees to enroll newly qualified domestic parties, and other eligible dependents per the applicable tag-along rule, according to the rules that otherwise apply to new spouses. Any such discretionary rules should be memorialized in the relevant plan documents and in the employee handbook, benefits guide, or other employee-facing communications as applicable.

6. TAX CONSEQUENCES (IMPUTED INCOME) FOR COST OF HEALTH COVERAGE OF DOMESTIC PARTIES

Under federal law, the portion of an insurance premium that an employer pays for the coverage of an employee's domestic party, including any employee cost-share of the premium that is attributable to the domestic partner coverage and that is processed on a pre-tax basis, constitutes a taxable fringe benefit to the employee. Employers are required to process income tax and Social Security payroll tax withholdings accordingly. This type of payroll transaction is referred to as "imputing income," where the imputed income is the value of the non-monetary compensation given to the employee (in this case, the value of the health benefits provided to parties who are not the employee's tax dependents). Employers are required to add the value of the taxable fringe benefits to the employee's compensation in order to withhold mandatory employment and income taxes.

On the state level, the tax impact of domestic partner coverage varies based on the state's taxation of employer-provided benefits generally. For states that do not formally recognize domestic partnerships, the value of domestic party coverage is likely includable in the employee's income. Some states that formally recognize domestic partnerships treat the cost of domestic party coverage as excludable income. This means that a domestic party's coverage could be tax advantaged for state income, but taxed on the federal level. For example, this applies for domestic parties residing in California, District of Columbia, Hawaii (civil unions), New Jersey, Pennsylvania, Oregon and Rhode Island. Importantly, for purposes of taxation, the individuals generally must be registered domestic partners with their respective state in order to receive the state's tax advantages. Employers that offer domestic party health coverage should review the income tax code rules that apply in the states where the employer operates.

Imputing income specifically in the context of domestic party coverage means adding the fair market value (FMV) of the coverage to the employee's gross income and taxing that amount as normal wages. Whereas the IRS publishes explicit imputed income guidance for certain other taxable fringe benefits (such as employer-provided Group Term Life insurance; see IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*), to date the IRS has not published formal guidance on determining the fair market value for employer-provided health insurance. Generally accepted methods for calculating and processing imputed income for domestic partner health coverage are addressed in detail in Appendix B, **Calculating and Processing Domestic Partner Cost of Coverage Imputed Income**.

Employers that offer health coverage to domestic parties should ensure that employees who enroll domestic parties in the employer's health plan(s) are aware of the tax consequences of the enrollment(s). The **Model Certification of Family Relationships** form expressly requires employees to acknowledge their understanding that the cost of coverage or fair market value of benefits provided to a family member who is not the employee's tax dependent will be calculated and processed as imputed income. Employers that offer health coverage to domestic parties are encouraged to include notices to this effect in the employee handbook, benefits guide, or other employee-facing documents that reference the eligibility of domestic parties as dependents on the employer's group health plan(s).

Employers that provide fully or partially subsidized retiree health benefits to former employees and their dependents, including surviving spouses of former employees, should be aware that the portion of any such premiums paid on behalf of (or reimbursed to) an employee's domestic partner are not exempt from the IRS fringe benefit exclusion rules and will constitute taxable earnings to the former employee or the surviving domestic partner, as applicable. Employers that provide retiree health benefits should ensure that the taxable nature of domestic party coverage is referenced in the relevant plan documents and related retiree communications.

7. HEALTH FSA, LIMITED PURPOSE HEALTH FSA AND HRA CONSIDERATIONS

Health FSAs, limited purpose health FSAs, and HRAs are consumer spending accounts that help employees pay for qualified health care expenses on a tax-advantaged basis. Employers that sponsor one or more of these plans should understand the impact of domestic partner status on the plan rules, including contributions to and distributions from health FSAs (both general and limited purpose FSAs) and HRA reimbursements.

Health FSA and Limited Purpose Health FSA Contributions: Health FSA and limited purpose health FSA annual contribution limits are established by the IRS and may be further limited (but not increased) by employers according to their plan designs. The contribution limits are not based on an employee's health care enrollment status (whether the employee is enrolled in the employer's group health plan), the employee's enrollment tier (whether an enrolled employee has a single or family contract), or the employee's relationship status (whether the employee is single, married, or in a domestic partnership).

HRA Contributions: There is no minimum or maximum HRA contribution limit, nor is there any requirement to differentiate HRA funding according to a two-tier structure based on an employee's health coverage contract (single/family). For employers that offer domestic party health coverage and who differentiate HRA funding according to single versus family contracts, the employer should provide family-level HRA funding to any HRA-eligible employee with a family contract, regardless of whether the family contract results from the enrollment of tax dependents or domestic parties or both. However, as described in greater detail below, employees cannot use HRA funds to pay or reimburse medical expenses of a domestic party.

Health FSA, Limited Purpose Health FSA, and HRA Distributions: Federal law permits employees to use health FSA, limited purpose health FSA, and HRA funds to pay or reimburse qualified health care expenses of the employee, the employee's children to age 26, and the employee's tax dependents. Funds from these accounts may not be used to reimburse the expenses of a domestic party (or any other party who is not the employee's tax dependent). Employers should review the definition of "eligible dependents" in their health FSA, limited purpose health FSA, and HRA plan documents, as applicable, to ensure that the documents properly limit the parties eligible to receive plan benefits. Employers that engage a third party administrator for FSA or HRA services should review the third party's administrative practices to ensure that tax-free reimbursements are made strictly in accordance with the plan(s).

8. DEPENDENT CARE FSA CONSIDERATIONS

A dependent care FSA, also known as a dependent care assistance program, allows an employee to use pre-tax dollars to pay for qualified dependent day care expenses to enable the employee to work.

Dependent Care FSA Contributions: Dependent care FSA annual contribution limits are established by the IRS and vary according to an employee's tax filing status. Specifically, employees who are married but file separate tax returns are permitted to contribute to a dependent care FSA only one-half the amount allowed to other categories of tax filers. An employee in a domestic

partnership is not considered "married" for purposes of federal income tax and therefore is not restricted by the dependent care contribution limit that otherwise applies to the sub-set of married couples who file separately.

Dependent Care FSA Distributions: Federal law permits employees to use dependent care FSA funds to pay or reimburse qualified dependent care expenses of the employee's qualified tax dependent children (to age 13) and for adults (and children over 13) who are deemed to be qualifying persons for the child and dependent care tax credit. Dependent care FSA funds may not be used to reimburse the expenses of a domestic party unless the domestic party is the employee's tax dependent or is deemed a qualified person for the child and dependent care credit.

Because a domestic partner is not a spouse, an employee in a domestic partnership is not restricted by the dual earned income requirement that otherwise limits eligible distributions from a dependent care FSA if a spouse is unemployed.

See IRS Publication 503, *Child and Dependent Care Expenses*, for further information regarding dependent care FSA contributions and distributions.

9. HSA CONSIDERATIONS

An HSA is a tax-advantaged medical savings account available to employees who are enrolled in a high-deductible health plan (HDHP) and who do not have impermissible "first dollar" coverage (coverage that pays for medical expenses below the statutory minimum deductible for the HSA, such as a general purpose health FSA, HRA, Medicare, TRICARE, or no-cost telehealth). Importantly, temporary guidance from the IRS permits telehealth coverage with zero or low cost-sharing without impacting HSA eligibility. That temporary rule is effective for plan years beginning on or before 12/31/2021. An employee whose spouse has impermissible coverage (for example, a spouse has a general purpose health FSA or HRA) is deemed to have impermissible coverage based on the employee's opportunity to benefit from the spouse's coverage, regardless of whether the spouse uses FSA or HRA funds to pay or reimburse the employee's medical expenses. By contrast, an employee whose domestic partner has impermissible coverage (for example, a domestic partner has a general purpose health FSA or HRA) is not deemed to have impermissible coverage because the IRS does not allow the use of the domestic partner's account for the employee's expenses (and vice versa, as discussed in greater detail under HSA Distributions below).

Note Regarding Medicare and TRICARE Enrollments: An employee's enrollment in any part of Medicare (Parts A, B, C, and/or D) or in TRICARE constitutes impermissible coverage and renders the employee ineligible to make or receive contributions to an HSA. However, the employee's coverage of a Medicare- or TRICARE-enrolled spouse, domestic partner, or child does not constitute impermissible coverage and does not adversely affect the employee's HSA eligibility.

HSA Contributions: HSA contribution limits are established by the IRS according to a two-tier structure (single/family). Although the contribution limits are expressed as annual amounts (that is, dollars per year), an employee's specific HSA contribution limit is calibrated monthly and is governed by the employee's HDHP enrollment tier and HSA eligibility status as of the first of each calendar month. (Under the last-month rule, an employee who is HSA-eligible on the first day of the last month of the employee's tax year – December 1 for most taxpayers – is considered HSA-eligible for the entire tax year, provided the employee remains HSA-eligible during the testing period, which begins with the last month of the tax year and ends on the last day of the 12th month following that month.)

Employers are permitted (but are not required) to make contributions to employee HSAs. For employers that make HSA contributions, the contribution amount can be (but is not required to be) differentiated based on whether the employee has single or family HDHP coverage. In all cases, the federal HSA contribution limit is inclusive of employee HSA contributions (if any) and employer HSA contributions (if any).

For employers that offer domestic party health coverage and who make employer contributions to employee HSAs that are differentiated according to single versus family HDHP contracts, the employer is obligated to make a family HSA contribution to any HSA-eligible employee with family coverage, regardless of whether the family coverage results from the enrollment of tax dependents or domestic parties or both. All employer HSA contributions are treated as non-taxable earnings, regardless of whether the employee enrolls one or more domestic parties on the underlying HDHP; however, as described in greater detail below, employees cannot use their HSA funds to pay or reimburse medical expenses of a domestic party.

Whereas spouses are collectively limited to the family HSA maximum contribution, a domestic party who is enrolled on an employee's HDHP coverage and who is otherwise HSA-eligible can open their own HSA account and can separately contribute up to the family HSA maximum; that is, both the employee and the domestic party can contribute up to the annual family HSA maximum to each of their respective HSAs.

HSA Distributions: Generally, individuals may use HSA funds to pay or reimburse medical expenses exclusively for themselves and their tax dependents. Thus, unless a domestic party qualifies as the employee's tax dependent, an employee cannot pay or

reimburse a domestic party's medical expenses from the employee's HSA. A domestic party who has established their own HSA can pay or reimburse their own medical expenses from that HSA.

Ultimately, HSA distributions are up to the individual to substantiate and defend upon IRS inquiry. Employers are encouraged to ensure the availability of robust educational information regarding HSA-eligible expenses but are not required to substantiate the permissibility of an employee's HSA distributions.

See IRS Publication 969, *Health Savings Accounts and Other Tax-Favored Health Plans,* for further information regarding HSA, health FSA, and HRA contributions and distributions. See also the PPI publication **Health Savings Accounts: A Guide for Employers** for more information on HSAs generally.

10. INSURANCE CARRIER CONSIDERATIONS

Employers that offer domestic partner health coverage should work closely with insurance carriers (for fully insured plans) and stop-loss carriers (for self-insured plans) to confirm the details of the plan's eligibility rules regarding domestic parties, including any requirements that pertain to the definition of a domestic partner and the certification of a domestic partnership. Some carriers may have strict requirements per state law or as outlined in their rules and contract terms, while others may rely on employers to establish their own domestic partner definition, certification practices (if any), and coverage eligibility rules, including related COBRA entitlements, as discussed below. Either way, employers should ensure that the eligibility terms and continued coverage rules are approved by the carrier, clearly memorialized in the plan documents, and properly communicated to employees.

11. COBRA CONSIDERATIONS

The Consolidated Omnibus Budget Reconciliation Act (COBRA), enacted by Congress in 1985, requires most employers to offer qualified beneficiaries the opportunity to pay for temporary continued health coverage for themselves and their enrolled dependents when their coverage ends due to the termination of employment (other than for gross misconduct) and other triggering events. Qualified beneficiaries include covered (enrolled) employees, enrolled spouses, and dependent children of covered employees. In addition, qualified beneficiaries include children born to or adopted by a covered employee during a period of COBRA continuation coverage; however, the new spouse of an employee who marries during a period of COBRA continuation is not a qualified beneficiary because the spouse was not enrolled in the plan at the time of the COBRA-qualifying event.

Unlike spouses and dependent children of covered employees, domestic parties are not qualified beneficiaries under COBRA and therefore do not have individual (independent) COBRA rights separate from the employee; that is, they do not have the right to elect their own individual continuation coverage when the employee's coverage ends. However, an employee who elects COBRA has the right to elect to continue coverage for a domestic party if the domestic party was covered on the plan immediately prior to the employee's COBRA-qualifying event. In addition, an employee who elects COBRA has the right to add a domestic party during a subsequent open enrollment period or due to loss of coverage special enrollment rights (provided the employer otherwise offers domestic partner health coverage).

All of that said, employers that offer domestic partner health coverage can design their health plans to provide domestic partners with COBRA-like health care continuation benefits, provided the insurance carrier agrees and the provision is included in the plan document. Such provisions can allow an employer to offer COBRA-like coverage to an employee's former domestic partner upon timely notice of the termination of the domestic partnership; similarly, such provisions can allow an employer to offer COBRA-like coverage to a new domestic partner of the employee's former domestic partner if a subsequent qualifying event occurs during the continuation period. Employers that choose to offer these COBRA-like benefits to domestic partners generally follow the same COBRA notification and premium rules (including issuance of the COBRA Initial Notice) that otherwise apply to bona fide qualified beneficiaries.

Employers that offer domestic partner health coverage and that engage a third party administrator for COBRA services should review the third party's administrative practices, including the COBRA election packet itself, to ensure that any references to the rights of qualified beneficiaries are consistent with COBRA law (as modified by the employer's plan document, if applicable).

On the state level, state continuation of coverage laws (sometimes called "mini-COBRA" regulations) may apply and extend coverage to domestic partners. Employers should review state continuation laws as needed to determine whether mandatory coverage continuation rules apply.

Employer-Paid COBRA Premiums: COBRA premium amounts paid on behalf of or reimbursed to current or former employees and their dependents (such as in the context of separation agreements) are excluded from income tax witholding. (See IRS Publication 15-B, *Employer's Tax Guide to Fringe Benefits*.) However, any portion of any such COBRA premium amounts paid on

behalf of (or reimbursed to) a current or former employee's domestic partner are not exempt from the IRS fringe benefit exclusion rules and therefore constitute taxable earnings to the employee.

12. GROUP TERM LIFE AND ACCIDENTAL DEATH & DISMEMBERMENT INSURANCE CONSIDERATIONS

Group term life insurance pays a sum of money to a named beneficiary upon the death of the policy holder. Accidental death and dismemberment (AD&D) insurance pays a sum of money to an employee who suffers an accidental dismemberment, or to the beneficiary of an employee who suffers an accidental death.

Coverage: There is no federal requirement to include domestic partners within the qualified dependents classification that otherwise includes spouses in connection with employer-sponsored life or AD&D insurance plans, regardless of whether the plans are employer-paid or voluntary. Employers that choose to include domestic parties within the qualified dependents classification for life or AD&D benefits should ensure that their plan documents reflect this eligibility, including the eligibility of a domestic partner's child to receive benefits that may be payable for tuition reimbursement or day care expenses for a dependent child in connection with the relevant plan provisions.

Beneficiaries: Employees have broad discretion to designate beneficiaries of their choosing, including a domestic partner, on an employer-sponsored life or AD&D policy, regardless of whether the plan is employer-paid or voluntary. Married employees in community property states, or employees with registered domestic partners in states that recognize domestic partnerships, should be aware of restrictions that may apply regarding naming beneficiaries other than the spouse or domestic partner, as applicable.

13. VOLUNTARY BENEFITS CONSIDERATIONS

Many employers offer voluntary employee benefits, such as legal, identity theft, accident, critical illness, and hospital indemnity insurance. There are no federal or state laws that require employers to provide these benefits, and such plans are typically offered on a fully voluntary (employee-paid) basis. To the extent that the plans extend enrollment opportunities to an employee's spouse, employers may wish to confirm with carriers whether an employee is permitted to enroll a domestic partner in the plan under the same terms and conditions that apply to a spouse. If premiums for coverage of a domestic partner are paid by the employer, such premium amounts constitute taxable earnings to the employee.

Tuition Reimbursement Benefits: Employers that offer tuition reimbursement benefits to employees and eligible family members should be aware that any such benefits paid on behalf of a domestic party are not exempt from the IRS fringe benefit exclusion rules and therefore constitute taxable earnings to the employee.

14. RETIREMENT PLAN CONSIDERATIONS

Defined Benefit Plans: A defined benefit plan promises a specified monthly benefit (stated either as an exact dollar amount or, more commonly, as a formula that references years of service and final average pay); it provides for periodic post-retirement payments for the life of the employee. Under the Employee Retirement Income Security Act (ERISA), qualified defined benefit plans must make benefits payable in certain distribution forms. The default benefit distribution form for a single or non-married employee is a single life annuity. For married employees, the default benefit distribution form is a Qualified Joint and Survivor Annuity (QJSA), which provides for the continuation of periodic benefits to the employee's spouse after the employee dies (unless such benefits are declined by both parties to the marriage). (A Qualified Pre-retirement Survivor Annuity, or QPSA, provides an annuity for the life of the surviving spouse if the employee dies before the annuity start date under the plan.)

Employers are permitted (but are not required) to allow employees to designate domestic partners for QJSA/QPSA survivor benefits under their defined benefit pension plan. Employers that choose to recognize domestic partners in connection with their plan should ensure that this provision is reflected in the plan document.

Defined Contribution Plans: A defined contribution plan does not promise a specific benefit dollar amount or benefit formula at retirement. Instead, it allows the employee or employer (or both) to contribute to an employee's individual investment account on a tax-favored basis, with restrictions on when and how an employee can withdraw funds from the account without penalty, and with the understanding that final benefit payments are subject to investment fluctuations. Employees have broad discretion to designate beneficiaries of their choosing, including a domestic partner, on a defined contribution plan. Married employees in community property states, or employees with registered domestic partners in states that recognize domestic partnerships, should be aware of restrictions that may apply regarding naming beneficiaries other than the spouse or domestic partner, as applicable.

15. CORRECTING PLAN DOCUMENT, DEPENDENT ELIGIBILITY COVERAGE AND REPORTING ERRORS

Employers should conduct periodic plan reviews and dependent eligibility audits to ensure that their benefits plans and eligibility practices are properly aligned. Employers that identify errors or omissions in their benefit plan documents or in their dependent eligibility or enrollment practices for domestic parties should take appropriate steps to amend the plan documents (and any related employee communications), or to correct the eligibility or enrollment practices as needed, to avoid fiduciary violations under ERISA. If an employer finds that it has provided benefits to (or on behalf of) ineligible dependents, it can correct enrollments prospectively but should be aware that restrictions may apply to the retroactive rescission of certain coverages.

Employers should consult with their legal or tax advisors as needed regarding appropriate corrective measures for under-reported employee earnings for prior years, whether in connection with imputed income or any other employee earnings.

16. SUMMARY

There are myriad compliance and plan administration considerations related to the recognition of domestic partnerships in the context of employee benefits. While there are relatively few instances in which employers are required to offer domestic partner health coverage to their employees, there are increasingly widespread requirements to recognize domestic partners as family members in connection with state and municipal leave of absence provisions. In addition, employers that offer tax-advantaged benefits must ensure that the plans are operated according to applicable IRS and Department of Labor rules as well as state-specific regulations.

RESOURCES

"IRS Answers to FAQs for Registered Domestic Partners and Individuals in Civil Unions"

IRS Publication 15-B, Employer's Tax Guide to Fringe Benefits, 2018

IRS Publication 503, Child and Dependent Care Expenses

IRS Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans, 2019

U.S. Department of Labor "FAQs on HIPAA Portability and Nondiscrimination Requirements for Workers"

About PPI

PPI Benefit Solutions is a service-first company made up of experienced insurance and benefits experts hyper-focused on responding to the needs of our clients and partners, while delivering transformational, end-to-end benefits administration services and technology at open enrollment, throughout the plan year, and through renewal.

For more information, visit **ppibenefits.com**.

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PPI BENEFIT SOLUTIONS

APPENDIX A: MODEL CERTIFICATION OF FAMILY RELATIONSHIPS

Employers have broad discretion to determine the qualifications for a domestic partnership and to determine what constitutes evidence of a domestic partnership for purposes of administering any mandatory policies (such as those required under a growing number of state leave laws) or discretionary policies (such as may pertain to an employer's health plans) that recognize an employee's domestic partner. Because government-issued certificates of domestic partnership are not uniformly available in all states or municipalities, employers should establish an alternative means of recognizing domestic partnerships – such as by adopting this **Model Certification of Family Relationships** – to facilitate administration of the employer's benefits policies and plans.

The **Model Certification of Family Relationships** document, which includes and incorporates by reference the accompanying **Chart of Family Members**, offers an appropriate means of recognizing a range of family relationships, including but not limited to domestic partnerships. It allows employers 1) to specify whether they require (or, alternatively, simply reserve the right to require) employees to submit documentation in support of family relationships; and 2) to memorialize the employer's definition of "domestic partner" and identify related evidentiary documentation for purposes of administering any of its leave of absence and employee benefits policies and plans that recognize domestic partnerships.

Employer Instructions: To implement the **Model Certification of Family Relationships** document, 1) complete the **Certification of Family Relationships** form as indicated in the opening paragraph of the form; and 2) complete the discretionary domestic partner definition and certification details on the **Chart of Family Relationships** by following the employer action items noted below. The **Certification of Family Relationships** form is designed to be executed by all employees at time of hire (or upon the employer's subsequent adoption of the form), regardless of the employee's benefits enrollment status.

EMPLOYER GUIDANCE AND ACTION ITEMS

DEFINITION OF DOMESTIC PARTNER

Core Criteria:

Virtually all states and municipalities that provide a registry of domestic partnership require that the parties minimally satisfy the four conditions noted in the definition of domestic partner on the **Chart of Family Members**; these conditions are repeated immediately below for easy reference. Unless the employer expressly provides otherwise, it is understood and accepted that the employer's definition of a domestic partnership will include these core criteria:

- The parties in a domestic partnership are in a committed interpersonal relationship with each other and intend to remain so indefinitely.
- Neither party in a domestic partnership is married to or in a domestic partnership with someone else.
- Both parties in a domestic partnership are at least 18 years of age and mentally competent to consent to a domestic partnership.
- The parties in a domestic partnership are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which the parties reside.

Discretionary Criteria:

Employers have broad discretion to require such additional qualifications for domestic partnerships as they see fit, provided the qualifications are not more restrictive than the prevailing qualifications for a domestic partnership in states or municipalities where the employer operates. Employers should carefully consider the purpose of establishing more exacting discretionary domestic partner criteria (if any) and the administrative challenges of ensuring compliance with any such requirements.

- **Same-Sex and Different-Sex Domestic Partners:**

  Most states and municipalities that provide a registry of domestic partnership provide equally for the qualification of same-sex and different-sex domestic partners. Unless the employer expressly provides otherwise, it is understood and accepted that the employer's definition of a domestic partnership provides equally for the qualification of same-sex and different-sex domestic partners. Employers that require domestic partnerships to be exclusively either same-sex or different-sex relationships (where this distinction is permitted at the employer's discretion) should memorialize the Same-Sex/Different-Sex Domestic Partners requirement on the **Chart of Family Members** document.

Employer Action Item 1: Complete (or delete) the discretionary Same-Sex/Different-Sex Domestic Partners item on the **Chart of Family Members** document as applicable.

- **Cohabitation:**

  Many states and municipalities that provide a registry of domestic partnership also require that the parties cohabitate (share a primary residential address). Where this requirement exists, many states and municipalities further require that the parties satisfy a minimum length of cohabitation, typically not less than six months. Employers that require cohabitation to qualify for a domestic partnership should memorialize the cohabitation requirement on the Chart of Family Members document, including the length of cohabitation (if applicable) and whether exceptions are made for assignments abroad or other employment-related, financial, or similar obstacles.

  Employer Action Item 2: Complete (or delete) the discretionary Cohabitation item and sub-items on the **Chart of Family Members** document as applicable.

- **Other Indicia of Domestic Partnership:**

  Some states and municipalities that provide a registry of domestic partnership also require additional qualifications for domestic partnerships, including one or more of the following: attestations (from one or both parties) regarding a significant measure of financial interdependence or dependence; attestations (from one or both parties) regarding the parties' intent to live together indefinitely; and attestations (from one or both parties) regarding a specified minimum length of time since the termination of a prior domestic partnership or marriage (other than a prior domestic partnership or marriage that ended due to the death of the domestic partner or spouse).

  Employer Action Item 3: Complete (or delete) the discretionary Other Indicia of Domestic Partnership item(s) on the **Chart of Family Members** document as applicable.

Evidence of a Domestic Partnership:

As noted on the **Chart of Family Members**, employers generally rely on evidence of a domestic partner registration (regardless of country, state, or municipality of origin), or on a domestic partnership certification issued by the domestic partner's employer, as sufficient evidence of a domestic partnership for purposes of meeting the employer's definition of a domestic partner. Because such certifications are not uniformly available through state and municipal agencies, employers should establish alternative evidentiary documents for recognizing domestic partnerships and should ensure that the certification practices are reasonably consistent with those for other family members (such as spouses and children).

Evidentiary documents for domestic partnerships are typically those that indicate unilateral dependence or mutual interdependence. The documents listed on the **Chart of Family Members** document are generally recognized as evidence of dependence or interdependence. Employers have broad discretion to determine which documents, and how many different documents, they require to substantiate a domestic partnership. Generally, the ability to provide any two or three of the documents (or similar documents) is deemed sufficient.

- **Evidentiary Documents:**

  Employers that require, or reserve the right to require, submission of evidentiary documents to qualify for a domestic partnership should memorialize the documentation requirement in the **Certification of Family Relationships** document. Employers should ensure that any certification documents are handled according to the employer's policies governing personal and confidential employee information, and documents should be maintained according to the employer's record retention policies.

  Employer Action Item 4: Customize and complete (or delete) the discretionary Evidentiary Documents section on the **Chart of Family Members** document as applicable.

[NAME OF EMPLOYER] CERTIFICATION OF FAMILY RELATIONSHIPS

[Insert Name of Employer] ("Employer") requires/reserves the right to require [choose one] employees to submit documentation in support of family relationships for purposes of administering any and all employee benefits that the Employer may be required to provide pursuant to applicable city, county, state, or federal law, or by operation of a collective bargaining agreement (CBA) [include CBA reference as applicable], or that the Employer may from time to time chose to provide at its sole discretion.

The attached **Chart of Family Members** shows the definitions that are commonly used to denominate Family Members and the documents that are commonly used to substantiate family relationships. Unless otherwise indicated, the Employer will rely on these definitions and documents (as applicable) for purposes of administering its employee benefits policies and plans. To the extent that any applicable definitions are more restrictive than those provided by states or municipalities where the Employer operates, the state or local definitions shall prevail for employees who work in those locations.

The Employer reserves the right, at its sole discretion, to request additional documents or certifications as it deems appropriate and to accept photocopies or facsimiles of certified original documents when it determines that providing original documents poses an undue burden on the employee or family member. The Employer further reserves the right, at its sole discretion, to amend the **Certification of Family Relationships** requirements from time to time as it sees fit.

EMPLOYEE CERTIFICATION

I hereby certify that I have read the **Certification of Family Relationships** document in its entirety, including the attached **Chart of Family Members**, and that the Family Members I identify at any time in connection with any employee benefits for which I or my Family Member(s) is/are eligible or later become eligible under the Employer's benefits policies and plans are Family Members as defined on the **Chart of Family Members** or under the applicable state or municipal definition, whichever is less restrictive. I understand that my Employer will rely on my representation of any such Family Member relationships to extend benefits to, or on behalf of, one or more of my eligible Family Members.

I understand that the cost of coverage or fair market value of benefits my Employer provides to or on behalf of a Family Member who is not my tax dependent constitutes taxable earnings to me and will be calculated and processed by my Employer as imputed income.

I agree to provide such documentation in support of my Family Member relationships as my Employer or any of its insurance carriers or third-party administrators may require for the proper administration of my Employer's benefits policies and plans. I further agree to notify my Employer within 30 days if a previously named Family Member no longer meets the applicable definition. I understand that my failure to provide such documentation as may be required by my Employer or its insurance carriers or third-party administrators to substantiate my Family Member relationship, or the termination of any previously reported Family Member relationship, will be deemed evidence of fraud or material misrepresentation of fact and will be grounds for terminating benefits related to my Family Member(s) retroactively, or for denying benefits related to my Family Member(s) prospectively, as applicable. I further understand that my falsification of any such documentation of my Family Member relationships, or any false statements I make regarding Family Members in connection with my Employer's benefits policies and plans, will be grounds for disciplinary action, up to and including termination of my employment.

______________________________ _______________

Signature Date

____

Print Name

CHART OF FAMILY MEMBERS

Relationship	Definition	Acceptable Document(s)
Child (For the Child of a Domestic Partner, assumes the Child is not the employee's tax dependent. See IRC Section 152 for information regarding the "qualifying child" tests for tax dependency)	A biological child, adopted child, foster child, stepchild, legal ward, or a child of a person standing in loco parentis; child of a Domestic Partner NOTE: Age limits for Child benefits eligibility will vary according to benefit plan NOTE: Imputed income calculations will apply to the cost of coverage or fair market value of certain benefits provided on behalf of a Domestic Partner or the Child(ren) of a Domestic Partner	Birth certificate, adoption or foster papers, or other evidence of legal guardianship or parental status In loco parentis status: Employee attestation*
Domestic Partner (Assumes Domestic Partner is not the employee's tax dependent. See IRC Section 152 for information regarding the "qualifying relative" tests for tax dependency)	No uniform or omnipresent federal, state, or municipal definition Most employers minimally require that the following conditions are met: • The parties in a domestic partnership are in a committed interpersonal relationship with each other and intend to remain so indefinitely • Neither party in a domestic partnership is married to or in a domestic partnership with someone else • Both parties in a domestic partnership are at least 18 years of age and mentally competent to consent to a domestic partnership • The parties in a domestic partnership are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which the parties reside Additional employer requirements, if any, are noted under Definition of Domestic Partner section below NOTE: Imputed income calculations will apply to the cost of coverage or fair market value of certain benefits provided on behalf of a Domestic Partner or the Child(ren) of a Domestic Partner	Any one of the following: (a) Certificate of Domestic Partnership or registration with any registry of domestic partnership maintained by any country, state, or municipality, or a domestic partnership certification issued by an employer, that proves that the parties listed on the document have a domestic partnership; or (b) Certificate of Civil Union; or (c) Evidence of unilateral dependence or mutual interdependence, as evidenced by a nexus of factors including, but not limited to, common ownership of real or personal property, a household in common, children in common, shared budgeting, and the length of the personal relationship (see under Evidentiary Documents below for examples of generally-accepted evidence of a domestic partnership)
Grandchild	A child of the employee's child	Employee attestation*
Grandparent	A parent of the employee's parent	Employee attestation*
Household Member	No uniform or omnipresent federal, state, or municipal definition	See municipal provisions, as applicable
Parent	A biological, foster, or adoptive parent, a parent of a spouse or domestic partner, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a minor child	Employee attestation*
Sibling	A child of one or more of the employee's parents	Employee attestation*
Spouse	A husband or wife as defined or recognized under federal law, or under state law for purposes of marriage in the state where the employee resides	Certified Marriage Certificate or other official recorded document issued by a governmental authority that proves that the parties listed on the document have a legal marriage

* The Employee need only provide the Employer with a simple statement asserting the familial relationship. No substantiating documentation is generally required except as may be required by an insurance carrier in connection with its claim form(s) or as the Employer deems appropriate for the proper administration of its benefits policies and plans.

DEFINITION OF DOMESTIC PARTNER AND EVIDENCE OF DOMESTIC PARTNERSHIP

- The parties in a domestic partnership are in a committed interpersonal relationship with each other and intend to remain so indefinitely.
- Neither party in a domestic partnership is married to or in a domestic partnership with someone else.
- Both parties in a domestic partnership are at least 18 years of age and mentally competent to consent to a domestic partnership.
- The parties in a domestic partnership are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which the parties reside.

Employer Action Item 1: *Complete (or delete) the discretionary Same-Sex/Different-Sex Domestic Partners item as applicable, then delete this italicized instruction*:

- The parties in a domestic partnership meet the Same-Sex or Different-Sex qualification for coverage of a Domestic Partner as shown in the following chart:

Type of Benefit Policy or Plan	Same-Sex Eligible?	Different-Sex Eligible?
Medical, Dental, Vision	Yes / No [choose one]	Yes / No [choose one]
Voluntary Life and AD&D Insurance	Yes / No [choose one]	Yes / No [choose one]
Family Leave and other Leave of Absence policies	Yes / No [choose one]	Yes / No [choose one]

Employer Action Item 2: *Complete (or delete) the discretionary Cohabitation item and sub-items as applicable, then delete this italicized instruction:*

- Both parties in a domestic partnership live together, [except as otherwise precluded by assignments abroad or other employment-related, financial, or similar obstacles], [and have been living together on a continuous basis for a minimum of __ [insert number] months].

Employer Action Item 3: *Complete (or delete) the discretionary Other Indicia of Domestic Partnership item(s) as applicable, then delete this italicized instruction:*

- The parties in a domestic partnership meet the following Other Indicia of Domestic Partnership:

[Insert Other Indicia of Domestic Partnership as applicable]

Employer Action Item 4: *Customize and complete (or delete) the discretionary Evidentiary Documents section as applicable, then delete this italicized instruction:*

- The parties in a domestic partnership can (and will, as may be required or requested) provide the following Evidentiary Document(s):
  - A Certificate of Domestic Partnership or registration with any registry of domestic partnership maintained by any country, state, or municipality, or a domestic partnership certification issued by an employer, that proves that the parties listed on the document have a domestic partnership; or
  - A Certificate of Civil Union; or
  - Evidentiary Documents that reasonably substantiate any __ [insert 2, 3, or other required number] of the following:

    > Joint ownership of a bank account or investment account

    > Joint ownership of a credit account

    > Joint ownership of a primary residence; Joint mortgage or lease

    > Joint obligation on a loan; Joint tuition payment obligation

    > Common household expenses (such as utility or telecommunications bills)

    > Child(ren) in common

    > Execution of a will by one party that names the other party as executor and/or beneficiary

    > Execution of a Durable General Power of Attorney or Medical Power of Attorney by one party that grants legal powers to the other party

    > Execution of a Beneficiary Designation form by one party that names the other party as the beneficiary for a retirement or life insurance plan benefit

    > Evidence of other joint financial responsibility (such as common ownership of a vacation home or rental property, motor or recreational vehicle, or business)

    > Evidence of unilateral financial dependence of one party on the other (such as a Trust document that names one party as the Trustee of a Special Needs Trust established for the benefit of the other party, or a Guardianship document that names one party as the legal guardian of the other party)

APPENDIX B: CALCULATING AND PROCESSING DOMESTIC PARTNER COST OF COVERAGE IMPUTED INCOME

CALCULATING THE FAIR MARKET VALUE OF DOMESTIC PARTNER COVERAGE

Employers that offer health coverage to domestic partners or the child(ren) of domestic partners (collectively referred to as "domestic parties" in this document) who are not the employee's tax dependents, or to any other parties who are not the employee's tax dependents, are required to process imputed income on the fair market value (FMV) of the coverage attributable to the employee's covered domestic parties or to other covered dependents who are not the employee's tax dependents.

While the IRS has not provided explicit guidance for calculating the fair market value of the health coverage provided to domestic parties, there are two generally accepted methods for performing this calculation. The fair market value calculation forms the basis for the imputed income calculation (see Calculating Imputed Income on Domestic Partner Coverage below).

Method 1, Incremental Cost Formula for FMV: The Incremental Cost Formula deems the fair market value of covering one or more domestic parties to be the difference between the premium cost (or premium equivalent cost, for self-insured plans) for the coverage tier that would pertain **without** the domestic parties (hereafter the Base Tier) and the premium cost for the coverage tier that results from the addition of one or more domestic parties to the Base Tier.

If the addition of one or more domestic parties to the Base Tier produces no change to the coverage tier, the fair market value of covering one or more domestic parties should instead be calculated according to Method 2 (Premium Cost Formula, see below), because the calculation would otherwise produce a fair market value of zero dollars. Based on IRS treasury regulations that broadly address the valuation of fringe benefits relative to the amount an individual would have to pay for the benefit in an arm's length transaction, the conclusion that the fair market value of health coverage is zero would be unacceptable to the IRS.

When an employee adds (enrolls) one or more domestic parties to an enrollment that already includes one or more domestic parties (such as when an employee adds a domestic partner's newborn or adopted child to a plan that already includes enrollment of the domestic partner), the calculation of the Incremental Cost is measured from the Base Tier, i.e., the tier that would pertain without the enrollment of any domestic parties.

The Incremental Cost Formula is calculated in reverse when an employee removes one or more domestic parties from the plan, such as due to the dissolution of a domestic partnership or a domestic partner's child reaching the age limit for dependent coverage.

Method 2, Premium Cost Formula for FMV: The Premium Cost Formula deems the fair market value of covering **one** domestic party (either the domestic partner or the domestic partner's child) to be equivalent to the premium cost (or premium equivalent cost, for self-insured plans) for single (employee only) coverage. Under the Premium Cost Formula, the fair market value of covering **two or more** domestic parties is calculated as the difference between the premium cost for single (employee only) coverage and the premium cost for the coverage tier that results from the addition of the domestic parties to single coverage. The Premium Cost Formula calculations are made without respect to whether the employee also simultaneously enrolls, or previously enrolled, one or more tax dependents or domestic parties on their health coverage.

The Premium Cost Formula is calculated in reverse when an employee removes one or more domestic parties from the plan, such as due to the dissolution of a domestic partnership or a domestic partner's child reaching the age limit for dependent coverage.

CALCULATING EMPLOYEE COST-SHARE ATTRIBUTABLE TO DOMESTIC PARTNER COVERAGE

Most employers require employees to pay a portion of the premium cost (hereafter the Cost Share) for coverage in the employer's group health plan. Conceptually, the methods for calculating the Cost Share attributable to coverage of one or more domestic parties mimic the Incremental Cost Formula and Premium Cost Formula described above (see Calculating the Fair Market Value of Domestic Partner Coverage).

Method 1, Incremental Cost Formula for Cost Share: The Incremental Cost Formula deems the Cost Share of covering one or more domestic parties to be the difference between the Cost Share for the coverage tier that would pertain **without** the domestic parties (hereafter the Base Cost Share) and the Cost Share that results from the addition of one or more domestic parties to the Base Cost Share.

If the addition of one or more domstic parties to the Base Cost Share produces no change to the coverage tier, the Cost Share of covering one or more domestic parties should instead be calculated according to Method 2 (Absolute Value Formula, see below).

Method 2, Absolute Value Formula for Cost Share: The Absolute Value Formula deems the Cost Share of covering **one** domestic party (either a domestic partner or a domestic partner's child) to be equivalent to the Cost Share for single (employee only) coverage. Under this formula, the Cost Share of covering **two or more** domestic parties is calculated as the difference between the Cost Share for single (employee only) coverage and the Cost Share for the coverage tier that results from the addition of the domestic parties to single coverage. The Absolute Value Formula calculations are made without respect to whether the employee also simultaneously enrolls, or previously enrolled, one or more tax dependents or domestic parties on their health coverage.

The Cost Share Formula is calculated in reverse when an employee removes one or more domestic parties from the plan, such as due to the dissolution of a domestic partnership or a domestic partner's child reaching the age limit for dependent coverage.

CALCULATING IMPUTED INCOME ON DOMESTIC PARTNER COST OF COVERAGE

At the federal level, the portion of an employee's cost-share of health care premiums that is attributable to the coverage of one or more domestic parties must be paid with post-tax dollars; alternatively, it must be treated as imputed income. If an employer processes the domestic partner-related cost-share amount as an after-tax deduction, the **net** imputed income amount is calculated as the fair market value minus the domestic partner-related cost-share amount that was deducted on an after-tax basis.

Alternatively, if an employer processes the domestic partner-related cost-share amount as a pre-tax deduction (for example, by using the same pre-tax deduction codes otherwise established for processing Section 125 health care deductions), then the imputed income amount is equal to the fair market value. Many employers use this latter approach for administrative efficiency, but both approaches are permissible.

On the state level, the tax impact of domestic partner coverage varies based on the state's taxation of employer-provided benefits generally. For states that do not formally recognize domestic partnerships, the value of domestic party coverage is likely includable in the employee's income. Some states that formally recognize domestic partnerships treat the cost of domestic party coverage as excludable income. Employers that offer domestic party health coverage should review the income tax code rules that apply in the states where the employer operates.

REVISING IMPUTED INCOME CALCULATIONS

Imputed income calculations should be reviewed, and may be subject to revision, whenever any one or more of the following occurs: the employee adds or drops one or more dependents; the fair market value of the health care benefits changes due to changes in the premium cost (or premium-equivalent cost); or the employee Cost Share amount changes.

PROCESSING IMPUTED INCOME

Employers typically establish a denominated Domestic Partner Imputed Income Earnings Code and an offsetting Domestic Partner Imputed Income Deduction Code in their payroll system in order to process domestic partner-related imputed income transactions. When payroll entries are made in equal dollar amounts for the respective Earnings and Deduction codes, the result is a net pay of zero dollars to the employee but taxation of the employee on the imputed income earnings amount.

Imputed income transactions can be processed with each pay cycle (according to the employer's regular calendar for processing health benefits payroll deductions) or once annually at the end of the calendar year. Employees generally prefer the first option, as it avoids a year-end lump sum tax withholding event. Regardless of the payroll deduction frequency, employers should ensure that all imputed income transactions are processed before the end of the calendar year to avoid the impact of a retroactive change in an employee's reportable income. Any such retroactive change, including one that might be required to correct for under-reported earnings pursuant to IRS regulations, could require the employee and employer to file amended tax filings (such as a Form W-2, Form 1040, or other employment tax filings).

Payroll Tax Gross-Up: Employers are permitted to gross up employee income to assist with the tax burden of domestic partner cost of coverage imputed income tax; any such assistance must be provided in a uniform and non-discriminatory manner. Most employers that provide a domestic partner gross-up establish a fixed annual amount (such as $500/year or $1,000/year) and process the additional earnings according to the same payroll schedule as the imputed income transactions (i.e., ratably throughout the year or once annually at the end of the year). The domestic partner gross-up is intended as a recognition of, but not necessarily a full compensation for, the additional tax burden associated with an employee's enrollment of one or more domestic parties. Employers that choose to provide a domestic partner gross-up should include information about the gross-up in the employee handbook, benefits guide, or other employee-facing communications as applicable.

CORRECTING IMPUTED INCOME REPORTING ERRORS FOR PRIOR YEARS

Employers should consult with their legal or tax advisors as needed regarding appropriate corrective measures for under-reported employee earnings for prior year(s), whether in connection with imputed income or any other employee earnings.

PPI does not provide legal or tax advice. Compliance, regulatory and related content is for general informational purposes and is not guaranteed to be accurate or complete. You should consult an attorney or tax professional regarding the applica-tion or potential implications of laws, regulations or policies to your specific circumstances.

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