

Health Benefits for Domestic Partners

California Assembly Bill 205 requires all employers in California to provide the same benefits to employees with domestic partners as would be provided to spouses of employees. Domestic partners are two persons, each aged 18 or older, who have chosen to live together in a committed relationship, who are not legally allowed to marry in the state in which they reside, and who have agreed to be jointly responsible for living expenses incurred during the domestic partnership.

- “Live together” means that two people share the same living quarters. Each partner must have the legal right, documented in writing, to possess the living quarters.
- “Responsible for living expenses” means the partners are jointly responsible for the common welfare and financial obligations of each other, which are incurred during the domestic partnership.

The implementation of domestic partner benefits involves important considerations with respect to tax implications and benefits administration. Since 1999, California has enacted significant legislation that has facilitated the growth of domestic partner benefits in the state. At the same time, **federal law does not** generally recognize domestic partnerships as having the same standing as a qualified dependent, unless specific criteria are met. Unless a domestic partner can be qualified as a dependent, *the fair market value of health coverage provided to the domestic partner is taxable income to the employee*. This income must be reported on the employee’s W-2 and is subject to withholding for income, Social Security and Medicare taxes. In addition, the same federal dependent definitions also exclude domestic partners from coverage under Section 125 plans, and do not extend continuation coverage rights under COBRA nor FMLA leave on behalf of domestic partners.

Beginning January 1, 2000, California tax law extends tax benefits to domestic partner health coverage, and excludes amounts for the coverage from gross income. **Note:** this is only a change to state tax law, and does not change the taxability of domestic partner benefits under federal tax law. Employers will still need to report the value of domestic partner coverage on employees’ W-2s and employees with domestic partners should be advised to consult a qualified tax professional as to the applicability of federal and state tax laws to their personal situation.

Under California law a domestic partnership is permitted:

- between two adults of the same sex, or
- between two persons of the opposite sex if one or both are over age 62 and the over age 62 partner meets eligibility requirements for Social Security or Supplemental Security benefits
- must be at least 18
- must share common residence
- not be married or a member of another domestic partnership
- must not be related by blood in any way that would otherwise prevent them from being married in the state of California
- cannot form a new domestic partnership until six months after terminating a prior domestic partnership..

To register, persons must file the Declaration of Domestic Partnership Form available from the Secretary of State's web site at <http://www.ss.ca.gov> along with a \$10 filing fee.

California Senate Bill 1661, passed in 2002, permits an employee to utilize Family Temporary Disability Insurance (FTDI) benefits of up to six weeks of wage replacement for an employee to take time off work to care for seriously ill family members, including a domestic partner. FTDI benefits also apply to the birth of a child with the employee or the employee's domestic partner, or the placement of a child with the employee in connection with the adoption or foster care of the child by the employee or the employee's domestic partner. This new state benefit became effective July 1, 2004 for all employees currently covered under State Disability Insurance (SDI).