



Same-Sex Marriages, Domestic Partners and COBRA

After two landmark Supreme Court cases in *United States v. Windsor* and *Obergefell v. Hodges* opened the doors for same-sex couples to marry and for other states to recognize these marriage licenses, legally married same-sex couples are now potentially able for health care continuation rights.

What is COBRA?

The Consolidated Omnibus Budget Reconciliation Act of 1985, also known as COBRA, allows qualified beneficiaries the right to continuation health care coverage if their group plan coverage is lost to certain events. Besides offering the employee coverage, this also extends to their spouse and dependent children as well. Since the federal definition of the word “spouse” now includes both same-sex and opposite-sex couples as a result of these Supreme Court cases, legally married same-sex couples are now legally and equally entitled to COBRA coverage and all related rights if their group health plan is lost due to a qualified event such as divorce.

Some states allow same-sex couples to alternatively enter into a legal and formalized domestic partnership instead of marriage. These domestic partnerships entitle same-sex couples into many of the same state rights afforded to married couples, and allow employers to design their group health plans to allow domestic partners to be covered under the plan if necessary. However, being listed as a domestic partner will affect COBRA plans.

Definition of Qualified Beneficiaries

COBRA plans allow “qualified beneficiaries” to be eligible for COBRA election rights following a qualified event like a divorce. Legally, the term “qualified beneficiaries” only allows for **spouses** to receive COBRA election rights and not domestic partners. Even if domestic partners are covered under a group health plan, they will not be considered qualified beneficiaries and will not have the independent COBRA continuation election rights under federal law.

COBRA does require continuation coverage to be the same coverage that a qualified beneficiary had on the day before the qualifying event. Also, coverage must not differ in any way from the coverage made available to any similarly situated non-COBRA beneficiaries. This means that if a group offers health plan coverage to domestic partners, and the covered partner loses coverage due to a qualifying event, the employee could argue that they must be given the right to continue the coverage in effect before the qualifying event, which would include coverage for their domestic partner. Employees who can add a domestic partner to their coverage at open enrollment also have the same right to add a domestic partner onto COBRA coverage at open enrollment as well. Because the federal definition of “qualified

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beneficiary" doesn't include domestic partners, there is no guarantee that individuals will have the right to elect COBRA continuation for themselves.

It's important to note that adding domestic partners to your employee pre-tax benefits (i.e. Medical, dental and vision) creates imputed income for the employee as well. The IRS states that if you pay for health insurance for domestic partners or other beneficiaries that are not legal spouses or dependents as defined by the Internal Revenue Service (IRS), you must calculate the estimated fair market value (FMV) of those health benefits and credit that amount to the employee as "imputed income."

Employer next-steps

Since the rights of same-sex couples continue to evolve, employers should seek counsel or consult with HR Knowledge when reviewing or revising your current benefit rules to include benefits and continuation coverage for same-sex couples and domestic partners to ensure benefits parity for all your benefit-eligible employees. Please [contact us](#) with any questions or concerns.

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