

AB 2208 - New California Law Mandates Equal Insurance Coverage For Domestic Partners

Analysis Prepared on 11-5-2004 by Bill Robinson - IEAHU Legislative Chair - PalmCanyonIns@aol.com

This new law requires all individual and group health, dental, vision, disability, accident, and life insurance plans [plus auto insurance, maybe still other types] to provide Domestic Partners with coverage that is exactly equal to what spouse receive.

Under AB 2208, employer plan sponsors who provide insured benefits and offer such coverage's to spouse of their employees will only be able to purchase and offer coverage for spouses that also includes equal benefits for Domestic Partners. This new law does NOT allow for any exceptions or exemptions for ANY employers who might have religious or moral convictions for not wanting to comply with AB 2208. All employers must comply, unless they are clearly governed by the federal ERISA law, which always overrides state insurance laws.

Domestic Partners are defined as those partners who meet the requirements of and who have filed a valid Declaration of Domestic Partnership with the State of California's Secretary of State's office (fee required also). The Declaration establishes that the partners are unmarried, share a common residence, share basic living expenses, are not related by blood, are capable of consenting, and are both of the same gender- unless at least one of them is eligible for Social Security benefits for the aged and is older than age 62.

This D/P Registry is public information on the Secretary of State's website, as are copies of the Declaration of Domestic Partnership forms. Individually created Domestic Partner Declarations by carriers and HMO plans will not be acceptable anymore. However, Domestic Partners may also be eligible if they have an equivalent document issued by a local (municipal) agency within California or by another state or municipal agency under which the partnership was legally created.

Important Issue: While this new law does allow insurance and HMO plans to request a copy of the CA Declaration of Domestic Partnership when an employee wants to enroll their eligible Domestic Partner.....this proof can only be required IF the insurance plan or HMO ALSO requires proof of marriage (i.e.: Marriage Certificate) from every employee wanting to enroll their spouse. Thus I do not expect insurance plans to request proof of Domestic Partnership from anyone wanting to enroll their claimed Domestic Partner.

Plan sponsors need to be aware that the portion of premiums paid by the employer for all benefits coverage provided to Domestic Partners (as they may be paying for spousal coverage's).... is subject to federal income tax, FICA and FUTA tax withholding (i.e.: the premium costs for such D/P benefits paid for by an employer are fully taxable income to the employee of the D/P - since federal tax laws do not recognize the concept of Domestic Partnership at all). However such benefits will be exempt from California state income taxes - if the Domestic Partnership has been registered with the State of California, but not if it was registered with a local/municipal agency.

Nor can an EE's premiums for their Domestic Partner's benefits be paid for through a Section 125 plan of any type, again because of IRS tax rules that do not recognize Domestic Partnerships.

Domestic Partners are not eligible for federal COBRA benefits (though many self-insured larger employers voluntarily provide such benefits). However, Domestic Partners are eligible for Cal-COBRA benefits when they have worked for an employer with less than 20 full and part-time employees.

As for the additional 18 month extension of COBRA and Cal-COBRA benefits- I conclude that Domestic Partners whose partners are employees of employers subject to federal COBRA will not be eligible for the extended 18 months of Cal-COBRA benefits (because they could not enroll first for COBRA benefits). But Domestic Partners whose partners are employees of small employers subject to Cal- COBRA will be eligible for the extended 18 months of Cal-COBRA benefits.

Effective Date: 1-1-2005 for all INDIVIDUAL health, dental, vision, life, accident and disability insurance and HMO policies issued, amended, delivered or renewed on or after this date

Effective Date: 1-2-2005 for all GROUP benefits insurance and HMO policies issued, amended, delivered or renewed on or after this date. This date gives calendar-year plans with 12-month policies in place by 1-1-2005 an extension until 1-1-2006 to comply.

Following are selected excerpts from the actual AB 2208 law itself:

1374.58. (a) A group health care service plan that provides hospital, medical, or surgical expense benefits shall provide equal coverage to employers or guaranteed associations, as defined in Section 1357, for the registered domestic partner of an employee or subscriber to the same extent, and subject to the same terms and conditions, as provided to a spouse of the employee or subscriber, and shall inform employers and guaranteed associations of this coverage. A plan may not offer or provide coverage for a registered domestic partner that is not equal to the coverage provided to the spouse of an employee or subscriber.

(b) If an employer or guaranteed association has purchased coverage for spouses and registered domestic partners pursuant to subdivision (a), a health care service plan that provides hospital, medical, or surgical expense benefits for employees or subscribers and their spouses shall enroll, upon application by the employer or group administrator, a registered domestic partner of an employee or subscriber in accordance with the terms and conditions of the group contract that apply generally to all spouses under the plan, including coordination of benefits.

(c) For purposes of this section, the term "domestic partner" shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) (1) A health care service plan may require that the employee or subscriber verify the status of the domestic partnership by providing to the plan a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership was created. The plan may also require that the employee or subscriber notify the plan upon the termination of the domestic partnership.

(2) Notwithstanding paragraph (1), a health care service plan may require the information described in that paragraph only if it also requests from the employee or subscriber whose spouse is provided coverage, verification of marital status and notification of dissolution of the marriage.

Following are selected excerpts from the actual AB 2208 Legislative Bill Analysis:

This bill:

1.Requires group health care service plans and health insurance policies to provide equal coverage to the registered domestic partner of an employee or subscriber with the same terms and conditions that are provided to a spouse of an employee or subscriber if that plan or policy offers spousal benefits. Precludes plans and policies from offering or providing coverage to a registered domestic partner that is not equal to that offered or provided to the spouse of an employee or subscriber.

2.Allows health care service plans and health insurance policies to require verification of a registered domestic partnership and its termination only if it also requests verification of marital status and notification of the dissolution of the marriage.

3.Requires insurance policies to provide coverage for registered domestic partners that are equal to the coverage provided to spouses and precludes a policy from offering to provide coverage for a registered domestic partner if that coverage is not equal to that offered to a spouse.

ARGUMENTS IN SUPPORT: According to the author's office, this bill conforms provisions in the Health and Safety and Insurance Codes made in AB 205 (Goldberg), Chapter 421, Statutes of 2003. It also brings those provisions in line with requirements made in existing non-discrimination provisions that ensure that domestic partners receive the same insurance coverage and spouses.

This bill is cosponsored by Insurance Commissioner John Garamendi, who states this bill simply conforms insurance statutes with AB 205 and establishes a necessary and consistent standard of non-discrimination in insurance. Equality California, the other cosponsor of this bill, suggests that lesbian, gay, bisexual, and transgender (LGBT) Californians are not always covered under their partners' policies in the same way spouses are covered. As a result, LGBT Californians are being denied benefits, paying discriminatory higher premiums, or being denied coverage. The California National Organization of Women agrees that this bill would clarify the law to afford domestic partners equal insurance coverage.