

in focus

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Illinois Civil Unions Law Impact on Employee Benefit Plans

Employers should review how their employee benefits may be affected by the new Illinois law

What is a Civil Union?

Effective June 1, 2011, Illinois will recognize civil unions in accordance with the Illinois Religious Freedom Protection and Civil Union Act (the "Act"). Under the Act, two individuals can enter into a civil union if they are: (i) at least 18 years old; (ii) not in a civil union, marriage, or other substantially similar legal relationship; and (iii) not closely related (e.g., not a sibling, descendant, cousin, etc.). Note that a civil union may consist of either a same-sex or opposite-sex couple.

Under the Act, a party to a civil union is entitled to the same benefits and protections as is afforded by Illinois law to spouses. Employers with employees in Illinois should consider how the Act will affect, among other things, their employee benefit plans and programs.

What is the Impact on Employee Benefit Plans?

Fully-Insured Health Plans. The Illinois Department of Insurance is expected to issue guidance on the impact of the civil union law on fully-insured health plans issued in Illinois. It is widely anticipated that such guidance will require fully-insured health plans issued in Illinois that provide spousal coverage to offer such coverage to an employee's civil union partner.

- ▶ Sponsors of fully-insured health plans should discuss these changes with their plan insurer/broker. Plan amendments and updates to plan communications and enrollment materials may be required.

- ▶ Until further clarification from the IRS, coverage extended to civil union partners under fully-insured plans is treated as taxable (imputed income) for federal tax purposes, but excludable for Illinois state tax purposes. Plan sponsors should notify their payroll departments of the tax treatment applicable to such coverage.

- ▶ Illinois continuation coverage laws are expected to apply to civil union partners.

Self-Insured Health Plans. The Act does not require self-insured health plans to provide coverage to an employee's civil union partner absent any other basis for coverage (e.g., the plan covers certain individuals who are dependents under federal tax law and the civil union partner qualifies

as such a dependent), but plan sponsors may voluntarily extend benefits to civil union partners.

- ▶ Plan sponsors should review the plan’s definition of “spouse.” Some plans as written may begin to cover civil union partners effective June 1 based on their current definition of “spouse.”

- ▶ Plan sponsors should determine whether to make coverage available to civil union partners. If yes, sponsors will need to notify their coverage carriers, stop loss insurers, and brokers and make the appropriate plan amendments and updates to plan communications and enrollment materials.

- ▶ Until further clarification from the IRS, coverage extended to civil union partners under self-insured plans is treated as taxable (imputed income) for federal tax purposes, but excludable for Illinois state tax purposes. Plan sponsors should notify their payroll departments of the tax treatment applicable to such coverage.

Flexible Spending Accounts (Section 125/Cafeteria Plans). Until further clarification from the IRS, health care expenses and dependent care expenses of an employee’s civil union partner are not eligible for reimbursement, unless the civil union partner qualifies as a “dependent” under Section 152 of the Internal Revenue Code, in accordance with the plan document.

Retirement Plans. Defined contribution plans (*e.g.*, 401(k) plans) and defined benefit pension plans are not required to recognize Illinois civil union partners for plan purposes. However, the plan’s definition of “spouse” may include civil union partners. Plan sponsors should review their retirement plan documents and consider whether the documents appropriately reflect who is a “spouse” for purposes of the plan.

Other Employee Benefit Plans. Pending guidance from the Illinois Department of Insurance, it appears that the Act will require employers that offer life and AD&D insurance to spouses to offer such coverage for civil union partners, if the policies for such coverage are issued under Illinois law. Employers should review their policies with their brokers and carriers to determine whether coverage should be extended.

Domestic Partner Policies. Employers should review their domestic partner policies to determine whether to expand or otherwise amend these policies in light of the Illinois civil union law.

Other Policies. Employers should review other policies, such as leave of absence, adoption, and bereavement policies, to determine if any updates are necessary. Employer should also review employee handbooks and manuals for any necessary updates.

We anticipate that the guidance regarding civil unions and employee benefit plans will

continue to evolve, and we will keep you apprised of developments in this area. For more information about the impact of the Illinois civil union law on your employee benefit plans and programs, please contact:

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