

EMPIRE STATE PRIDE AGENDA

GUIDANCE DOCUMENT: Equalizing Access to Insurance Benefits

SUMMARY: *To fully equalize access to insurance benefits for the families of all employees, employees in same-sex relationships should ideally not have to provide any information to an employer beyond that commensurate with the information a heterosexual married colleague needs to provide to (a) obtain a marriage license and (b) enroll their spouse in benefits.*

To gain access to domestic partner health insurance benefits, many employers require employees to sign Affidavits (or similar documents) attesting to the nature and quality of their relationship with their partner. Often, requirements include an attestation about (and sometimes proof of) financial interdependence and a certain period of cohabitation. Other common statements to which employees are required to attest in order to render their partners eligible for insurance coverage are that they and their partner provide mutual support and responsibility for each other's welfare; that they are jointly responsible for the necessities of life or the management of the household; that they intend to remain together indefinitely; and/or that they haven't been married to, or partnered with, anyone else for a designated period of time prior to the enrollment of this partner.

Many of the "nature and quality" requirements in DP Affidavits are legacy requirements dating to the initial inception of DP benefits in the 1980's. At that time, very few state or local mechanisms existed that legally recognized the relationships of same-sex couples, so employers, via DP Affidavits, tried to "approximate" marriage. The "nature and quality" requirements in DP Affidavits reflect that attempt. These requirements also reflected a fear at that time that opening access to benefits to the partners of employees in relationships that weren't legally recognized would encourage enrollment by fraudulent partnerships. But societal understanding and respect have evolved since the 1980's for the relationships that LGBT individuals share with their partners.

Some employers don't require **any** proof of marriage (e.g., a copy of the marriage license) before adding a heterosexual employee's spouse to the benefits plan. And it is safe to assume that virtually no employers make further inquiries into the nature and quality of a heterosexual employee's relationship with his/her spouse before adding the spouse to a benefits plan. Married heterosexual employees are not required to live together at all, much less for a certain amount of time, before a spouse can be added to the benefits plan, nor are they required to have been divorced from a previous spouse for a certain period of time before adding a new spouse to the plan. They are not required to open a joint bank account or own property together, much less provide a copy of the real estate or banking documents 'proving' such financial interdependence. They are not asked how long they plan to remain together as a couple. They are not required to attest to the way in which their household is managed.



In addition to inherently questioning the veracity of their relationships, much of this legacy language in DP Affidavits creates additional burdens for employees in same-sex relationships. To alleviate these burdens, and demonstrate respect for the authenticity of their relationships, employers should avoid making LGBT employees provide any more information than heterosexual employees provide to avail themselves of health insurance benefits for their spouses.

More specifically, to provide equal access to insurance benefits for the domestic partners of employees, employees should be able to either produce a government-issued license of some sort (such as a certificate of domestic partnership or civil union, if available), **or** attest only that they are of the age of consent, aren't related by blood, aren't in a marriage or partnership with anyone else, and are in a caring, committed relationship with their partner. (*see* Model DP Benefits Eligibility Requirements document, attached).

As with opposite-sex couples, employers should not require the non-employee partner to sign the Affidavit, and should not require the employee's signature to be notarized.

Employers also should not require employees in same-sex relationships to register for domestic partnerships or civil unions, even if they reside in a jurisdiction that offers these options. Civil unions, domestic partnerships and even marriages do not yet confer full state and federal rights on same-sex couples (or their children, if any) who enter into these arrangements. As such, many people with a same-sex partner may have legitimate reasons to choose not to enter into a status that does not accord full legal rights. This decision is not a reflection on their level of commitment to their partners, and should not be the basis of denying the protection of health insurance coverage to the families of employees in same-sex couples.

Many employers extend DP benefits to all employees, regardless of sexual orientation. But the burden of disclosures around the nature and quality of a relationship disproportionately impact employees in same-sex relationships who are foreclosed from the option of marriage in most of the country and who, even if they are legally married in a jurisdiction that permits it, are relegated to the option of DP benefits (rather than spousal benefits) because their relationships aren't recognized under federal tax law.

If you are interested in advocating for equal access to insurance benefits within your organization, the Talking Points attached to this Guidance are provided as a resource to support that advocacy.

The Empire State Pride Agenda Foundation is the non-partisan 501(c)(3) research, education and advocacy organization affiliated with the Empire State Pride Agenda, Inc. The Foundation advances the Pride Agenda's public policy goals by: educating public officials and policymakers; building coalitions and mobilizing allies; and organizing, empowering and educating the LGBT community in urban, suburban and rural communities across New York State.