

An aerial photograph of a suburban neighborhood with houses, streets, and green spaces, set against a blue sky background.

## FAQ: Domestic Partners and Benefits

Providing health and welfare benefits to employees, their spouses, and their dependent children is a relatively straightforward process that most employers and employees are familiar with. Questions often arise, however, when employees are permitted to elect coverage for individuals who are their domestic partner, but who are not their tax dependent.

### Premiums & Pre-Tax Confusion

If a domestic partner is not an employee's tax dependent under Code 105(b), the employee will owe imputed income on the value of the domestic partner's coverage. Take the following example:

Monthly Premium	Total Cost	Employee Pays	Employer Pays
Employee Only	\$500	\$50	\$450
Employee + Spouse or Domestic Partner	\$1200	\$200	\$1000

If Sam, the employee, elects coverage for themselves, they can pay their \$50 monthly premium with pre-tax dollars. If Sam elects coverage for themselves and their spouse, they can pay their \$200 monthly premium with pretax dollars. If Sam elects coverage for themselves and their domestic partner (who is not their tax dependent), Sam can pay for \$50 of the premium with pre-tax dollars, and the remaining \$150 with post-tax dollars; or Sam can pay the full \$200 with pre-tax dollars. If Sam pays the full \$200 pre-tax, Sam's imputed income calculation will be different than the \$50/\$150 split between pre and post tax dollars

In this example, Sam's employer contributes towards the cost of spousal/partner coverage. If Sam elects coverage for themselves and their spouse, the employer contribution has no imputed income implications. If Sam elects coverage for themselves and their domestic partner, the \$450 that

Tip: A domestic partner is not the same as a "spouse." A spouse is a same or opposite sex individual who is legally married to an employee. A domestic partner is an unmarried individual (same or opposite sex) who is partners with an employee. In employee benefit rules, an individual in a civil union who is not married is a domestic partner. Some states have an official license or registration process for domestic partners. Some states do not.

Tip: Employers should ensure that their plan documents use accurate terminology to discuss spouses and domestic partners. Unclear language such as "legal spouse or partner" can create confusion and uncertainty.

the employer pays towards the employee's coverage has no impact on Sam's paycheck. Sam must pay imputed income on the value of the coverage their domestic partner receives. That would be calculated by multiplying the employee-only COBRA premium by 12, which represents the fair market value of the coverage provided to the domestic partner. If Sam elected to pay \$150 of the premium with post-tax dollars, that would be subtracted from the imputed income total, so  $(\$500 - \$150) \times 12$ . As a result, if Sam elects coverage for their domestic partner, their paycheck will show the following:

- \$200 will be taken out pre-tax to pay for Sam's coverage (or \$50 pretax and \$150 post-tax)
- Sam will have annual imputed income of  $\$500 \times 12$  for which Sam will pay applicable payroll taxes; OR, if Sam paid their domestic partner's premium post-tax,  $(\$500 - \$150) \times 12$

Because of the complications that can arise when domestic partners have children, many employers find it easier to allow employees to pay the premium pre-tax, and adjust the end of year imputed income to reflect that.

### Account-Based Plans

Employees are unable to spend money from account-based plans on their domestic partner, unless their domestic partner is a tax dependent. Below are the individuals who can have their eligible medical expenses reimbursed by an FSA, an HRA, and an HSA.

FSA	HRA	HSA
The eligible medical expenses of the employee, spouse, children under age 27 (at the end of the year) and tax dependents	The eligible medical expenses of the employee, spouse, children under age 27 (at the end of the year) and tax dependents	The eligible medical expenses of the employee, spouse, and tax dependents as defined by IRS Code Sec. 223(d)(2)(A)

### Beginning or Ending a Domestic Partnership

Although an employee must pay for the premiums of a domestic partner on a post-tax basis (or pay imputed income), their plan will almost certainly only allow individuals to come on and off the plan under the related IRS regulations for cafeteria plans. As a result, typically the commencement of a domestic partnership is not a qualifying event that would allow an employee to add coverage mid-year for their domestic partner. In most cases, plans will require a loss of coverage in order for an employee to enroll a domestic partner mid-year. Employees who terminate their domestic partnership during the year will cause their domestic partner's coverage to terminate.

### Continuation Coverage

Federal law does not recognize a domestic partner as a spouse and a domestic partner is not recognized as a COBRA qualified beneficiary. However, an employer may extend COBRA-like coverage to a domestic partner and his or her covered children (typically other than for losses of coverage due to termination of the domestic partnership). However, COBRA rights and protections do not apply to this extension of domestic partner coverage, and employees have no recourse in the event their employer chooses not to offer continuation coverage of any type to domestic partners.

Although a domestic partner is not a COBRA qualified beneficiary, in the event the employee experiences a COBRA qualifying event (such as termination of employment), if the employee elects COBRA coverage for themselves, they

can also elect to continue coverage for their domestic partner that was covered under the plan prior to termination. If the employee does not elect coverage for themselves, then the domestic partner would not be able to elect to continue coverage independently unless the plan is drafted to provide independent election rights to domestic partners.

The children of the domestic partner can be considered independent COBRA qualified beneficiaries, but employers who cover domestic partners should seek counsel to ensure their plan documents properly reflect their obligations.