

Domestic Partner Health Benefits and Tax Policy

Nearly 6 million Americans live together as unmarried partners.¹ Currently, the federal tax code treats health benefits for unmarried and married partners differently, contributing to higher rates of uninsurance among those couples who are unmarried.² Comprehensive health reform must include efforts to revise federal and state policies that unfairly tax health benefits for unmarried partners.

Health Insurance for Domestic Partners: Same Benefits, Different Tax Treatment

Most nonelderly women, and most Americans in general, get their health care coverage tax-free from an employer. In the United States, most women with health insurance are covered through an employer-sponsored health plan. In 2007, 39 percent of nonelderly women were covered through their own employer's plan and another 25 percent were covered as spouses or dependents under a family member's employer-sponsored plan.⁶

The majority of employers who offer health insurance to their employees also offer health insurance for the employees' spouse and children. Like the job-based coverage an employee receives, coverage for a spouse or dependent child is not taxed because it is not considered employee income by the state or federal government. This means that employees receive a double benefit – health insurance for the people they care about, on a tax-free basis.

But workers with unmarried domestic partners are unlikely to receive an employer offer of health coverage for their partner; those who can get

What Is a Domestic Partnership?

A domestic partnership is a legal or personal relationship between two individuals who live together and share a common domestic life but are not joined by a traditional, government-sanctioned marriage. The federal government does not currently recognize domestic partnerships, but as of June 2008, 9 states—California, Connecticut, Hawaii, Maine, New Hampshire, New Jersey, Oregon, Vermont, and Washington—and the District of Columbia provided relationship-recognition structures for domestic partners, typically through laws that allow civil unions or that establish domestic partner registries.^{3,4}

The majority of the above states have instituted these structures as a way to recognize same-sex unions, though some states' laws apply to both same-sex and opposite-sex couples. Additionally, Massachusetts and Connecticut⁵ offer same-sex couples all of the state-level rights and benefits of marriage, and New York recognizes marriages by same-sex couples legally entered into in another jurisdiction.

Regardless of whether their state formally recognizes such relationships, employers may choose to offer health benefits to workers' domestic partners. Employers themselves can determine the criteria for a domestic partnership, including whether same-sex couples and/or opposite-sex couples qualify. For example, an employer may determine eligibility for domestic partner benefits by requiring employees to sign an "Affidavit of Domestic Partnership" and show proof of their partnership, such as evidence of joint purchase and ownership of a home.

benefits for their partners do not receive the same federal tax benefits as their married coworkers. In contrast to their married coworkers, employees with unmarried domestic partners do not receive the aforementioned “double benefit.” An overwhelming majority of American employers—roughly three out of four—do not offer health benefits to the domestic partners of their workers; employees of small businesses are especially unlikely to get an offer of domestic partner health benefits.⁷

Even if a worker is able to get health benefits for her domestic partner through her employer, her partner’s coverage does not receive the same favorable tax treatment as coverage for spouses and children. Domestic partner health benefits are treated like income by the federal government and most states, and are taxed as if the employee received a raise in salary for the value of the health coverage.

Because of this unequal tax treatment, workers who get job-based health insurance for their domestic partners pay an average of \$1,069 more per year in federal taxes than their married

State Tax Laws and Domestic Partner Benefits

The majority of states generally follow the federal lead on tax policy, but a handful of states have adopted tax laws that give domestic partner health insurance benefits the same favorable tax treatment as other job-based dependent coverage. For example, some of the state relationship-recognition laws referenced on the previous page influence how domestic partner health benefits are taxed. In those states where domestic partner health benefits are treated differently by federal and state tax systems, employers and employees must calculate income in several different forms based on state guidelines and then based on federal guidelines.⁹

counterparts who get the same coverage for spouses or children. Collectively, unmarried partners spend roughly \$178 million per year in additional federal income taxes.

This unequal tax treatment also provides a disincentive for employers to offer coverage for domestic partners. Because partner coverage counts as employee income and raises the firm’s total payroll, employers pay more in payroll taxes when they cover partners versus other family members. U.S. employers pay an estimated \$57 million per year in additional payroll taxes because of this situation.⁸

Federal Proposals Related to Domestic Partner Health Benefits

Though the federal government has not yet taken any actions that would improve circumstances for workers with domestic partners, two notable health reform proposals have been introduced in Congress that would benefit couples in domestic partnership arrangements:

- The Tax Equity for Domestic Partner and Health Plan Beneficiaries Act (S. 1556), sponsored by Senator Gordon Smith (OR), would eliminate the unequal tax treatment of domestic partner benefits so that the value of these benefits would be excluded from their federal income tax.
- The Domestic Partnership Benefits and Obligations Act (H.R. 3848), sponsored by Representative Tammy Baldwin (WI), would provide domestic partnership benefits (including retirement, life insurance, and health benefits) to all federal civilian employees on the same basis as spousal benefits. The legislation would allow domestic partners of eligible federal employees to get coverage through the Federal Employees Health Benefits Plan (FEHBP), which is the largest employer-sponsored health insurance program in the country. The FEHBP currently covers about 8 million federal employees, retirees, and their dependents through contracts with private insurance plans.¹⁰



What Can Women's Advocates Do?

The current tax treatment of domestic partner health benefits is unjust and makes it more difficult for domestic partners to obtain job-based health coverage. Individuals living as unmarried couples are two to three times more likely to have no health coverage than their married counterparts.¹¹ As the nation considers proposals to expand coverage to the swelling ranks of the uninsured, flawed policies that make it more difficult and more expensive for millions of hardworking Americans to get employer health benefits for their partners will only make the situation worse.

Women's advocates can support federal and state legislation that would treat domestic partner health benefits the same as spouse and family coverage.

Such legislation will prevent families headed by domestic partners from paying more in taxes than their married counterparts. It will also eliminate a financial disincentive for employers to offer health coverage to domestic partners, and therefore could increase the number of employers offering this coverage.



For further reading, see:

M.V. Lee Badgett, Center for American Progress and The Williams Institute, *Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits* (2007), <http://www.law.ucla.edu/williamsinstitute/publications/UnequalTaxesOnEqualBenefits.pdf>.

National Conference of State Legislatures, *Same Sex Marriage, Civil Unions and Domestic Partnerships* (2008), <http://www.ncsl.org/programs/cyf/samesex.htm>.

Human Rights Campaign, *Taxation of Domestic Partner Benefits*, <http://www.hrc.org/issues/workplace/benefits/4820.htm> (Last visited: June 29, 2008).

References

- 1 Tavia Simmons and Michael O'Connell, U.S. Census Bureau, *Married-Couple and Unmarried-Partner Households: 2000* (Feb. 2003), <http://www.census.gov/prod/2003pubs/censr-5.pdf>.
- 2 Julia E. Heck et al., *Health Care Access Among Individuals in Same-Sex Relationships*, *American Journal of Public Health*, 96(06): 1111-1118 (June 2006), <http://www.ajph.org/cgi/content/abstract/96/6/1111>.
- 3 Human Rights Campaign, *Relationship Recognition in the U.S.* (June 2008), http://www.hrc.org/documents/Relationship_Recognition_Laws_Map.pdf.
- 4 Christine Nelson, National Conference of State Legislatures, *Civil Unions and Domestic Partnership Statutes* (Mar. 2008), http://www.ncsl.org/programs/cyf/civilunions_domesticpartnership_statutes.htm.
- 5 On June 17, 2008, California began issuing marriage licenses to same-sex couples, though the California domestic partner registry remains in place. California voters decided in November 2008, however, to amend the state constitution to prohibit marriage equality. At the time of writing, it is uncertain how the state will treat the thousands of same-sex marriages already in effect. Meanwhile, several lawsuits have been filed to stop the enforcement of the November 2008 prohibition.
- 6 Kaiser Family Foundation. *Women's Health Insurance Coverage* (Dec. 2007), http://www.kff.org/womenshealth/upload/6000_06.pdf.
- 7 M.V. Lee Badgett, Center for American Progress and The Williams Institute, *Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits* (2007), <http://www.law.ucla.edu/williamsinstitute/publications/UnequalTaxesOnEqualBenefits.pdf>.
- 8 *Id.*
- 9 Human Rights Campaign Foundation, *The State of the Workplace for Gay, Lesbian, Bisexual, and Transgender Americans* (2006-2007), <http://www.civilrights.org/assets/pdfs/contentdisplay.pdf>.
- 10 John E. Dicken, U.S. Government Accountability Office, *Federal Employees Health Benefit Program: Premiums Continue to Rise, but Rate of Growth Has Recently Slowed* (May 18, 2007), <http://searching.gao.gov/cs.html?charset=iso-8859-1&url=http%3A//www.gao.gov/new.items/d07873t.pdf&qt=fehbp&col=&n=7&la=en>.
- 11 *Health Care Access Among Individuals in Same-Sex Relationships*, *supra* note 2.