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California Relaxes Registration Requirements for Opposite-Sex Domestic Partners

Sandra L Goodell | S L Goodell Ins Services Inc | 916-509-7229 | sandy@slgoodell.com

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Effective January 1, 2020, California eliminates the requirement that at least one member of an opposite-sex couple be at least age 62 and eligible for Social Security benefits in order for the couple to register as domestic partners with the state of California. For employers who sponsor fully-insured benefit plans, this may result in more employees enrolling a registered domestic partner in an employer-sponsored health plan.

Background

Under California law, domestic partners who are registered with the state's domestic partner registry are generally afforded the same rights, protections, and benefits as are granted to legal spouses.

If an insured group health plan offers coverage to legal spouses of employees residing in California, the plan is required to also offer coverage to the registered domestic partners of employees in California. Self-insured plans are not required to treat registered domestic partners the same as legal spouses in California for plan eligibility purposes. However, an employer with a self-insured plan may voluntarily choose to extend coverage to domestic partners; either requiring a couple be registered to be eligible, or crafting its own domestic partner eligibility criteria.

Under current law, in order to be registered domestic partners, a couple must file a Declaration of Domestic Partnership with the California Secretary of State, which attests that the couple meets certain criteria at the time of filing. One requirement is that one or both members of an opposite-sex couple must be (1) eligible for Social Security benefits, and (2) at least age 62.

California SB 30

California Senate Bill 30 was signed into law by Governor Newsom on July 30, 2019. This new law eliminates the additional requirement for opposite-sex couples that one or both members be eligible for Social Security benefits and age 62 or older in order to register as domestic partners. This change is effective January 1, 2020. Beginning January 1, 2020, the domestic partner definition outlined in Section 297 of the California Family Code will read:

- a. Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.
- b. A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:
 1. Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.
 2. The two persons are not related by blood in a way that would prevent them from being married to each other in this state.
 3. Both persons are at least 18 years of age, except as provided in Section 297.1.
 4. Both persons are capable of consenting to the domestic partnership.

After January 1, 2020, same-sex and opposite-sex partners will be subject to uniform rules for registering as domestic partners. This could result in an increase in the number of employees who have registered domestic partners, and therefore an increase in the number of employees looking to enroll registered domestic partners in any insured group health plan sponsored by their employer.

Employer Action

Employers with California employees should review the language in their plan documents, summary plan descriptions, employee handbooks, open enrollment materials, and other communications to see if there is a definition of domestic partner that will need to be updated. No change to the term "registered domestic partner" is necessary, but a list of the specific criteria required to register as a domestic partner in California will need to be updated, effective January 1, 2020.

In addition, an employer with a self-insured plan that has voluntarily extended coverage to domestic partners, and whose crafted definition of eligible domestic partner includes a requirement that one or both members of an opposite-sex couple be at least age 62 and/or eligible for Social Security benefits (to mirror the current California requirements), may want to consider amending that criteria to reflect the upcoming change in the California definition of domestic partner.