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Firms Expand Benefits for Domestic Partners, Dependents

By Debbi Mack, *February 2008*

Retired business analyst Gary Essary has shared many experiences with his partner Jerry Hamm in the 15 years they've been a couple. Among other things, they restored their Civil War-era house in Zionsville, Ind., from "just a pile of bricks."

And now, following a decision by his former, longtime employer, Dow Agrosciences, to expand its medical benefits program, the couple also shares health insurance coverage.

In 2006, Dow Agrosciences, a division of Dow Chemical, joined an increasing number of companies that are expanding their health benefits coverage to include domestic partners and their dependents. The trend, supporters say, helps place all workers on a level playing field and helps with recruitment, by assuring that gay couples and, often, straight unmarried couples enjoy the same benefits as more-traditional couples.

Still, some say that merely offering coverage doesn't go far enough. Compared to their married counterparts, domestic partners invariably pay thousands of dollars more for comparable coverage under an employer's health plan.

SHRM Video

David Lichtenberg, an attorney with the Morristown, N.J., office of Jackson Lewis, recommends changes to employment policies in response to new state laws prohibiting discrimination based on gender identity.

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The inequity is rooted in federal tax law. While spousal or dependant health coverage is tax exempt, the Internal Revenue Service treats domestic partner benefits as "imputed income" that is taxable to the employee. Most states also treat health coverage for domestic partners as a taxable benefit.

In Essary's case, he's had to claim various amounts of imputed income, because the value of Dow's self-insured plan fluctuates with the number of claims filed and the amount available to cover them. In 2006, he paid $2,636 taxes on $7,095 of imputed income. In 2007, the imputed income dropped to $5,909, upon which he paid $2,099 in taxes. Becuase the income from the benefit is imputed to Essary, the tax is computed at his higher 25 percent tax rate, not Hamm’s 10 percent rate.

Married couples pay no extra taxes when their spouse is covered under their employer's health plan.

Heath Buckmaster, an employee with a large manufacturing company, chooses to take the tax hit for covering his partner, David Smith, because Smith’s employer doesn’t provide cost-effective, high-quality coverage. Buckmaster believes that the better benefits are worth the additional $4,500 in annual income he must claim.

However, some domestic partners, like Essary and Hamm, say paying extra taxes for benefits is a necessity, not a choice. As a freelance writer, Sue Rochman of San Francisco has no benefits and is uninsurable under private plans because of a pre-existing condition. When her partner’s employer, FedEx, was required by state law to offer domestic partner benefits in California, Rochman said, “We had no choice. That was the only way I could get insured.”

Having to claim income on the value of health benefits is just one area in which domestic partners are at a disadvantage compared to spouses and dependents. Various federal laws have the combined effect of creating legal inequities in other aspects of health care coverage, as well as retirement benefits.

Nevertheless, an increasing number of large companies are offering benefits packages for employees with domestic partners—often without regard to sexual orientation. And these benefits are getting better. According to the Human Rights Campaign’s 2008 Corporate Equality Index, 195 employers got top ratings for their domestic partner benefits packages, compared with 13 companies in 2002. These companies usually offer benefits parity going well beyond what the law requires.

Having a diverse workforce, attracting top talent and the interests of fairness are among the reasons companies cite for offering a wide array of domestic partner benefits.

When it comes to expanding benefits to include nontraditional families, some employers have been particularly proactive. San Francisco-based Levi Strauss & Co. has been offering domestic partner benefits for more than 15 years. It was the first *Fortune* 500 company to do so. Since then, the company has sought legal changes, through lobbying and litigation, to eliminate inequities between straight and gay couples.

The Chubb Group of Insurance Companies has offered domestic partner benefits to gay and straight employees since 1996.

“Not only is it a recruiting and retention tool for gay, lesbian, bisexual and transgender [GLBT] employees, it is also one for straight employees who feel strongly about fairness,” said Kathy Marvel, Chubb’s senior vice president and chief diversity officer.

“Many of them cite our policies around [GLBT] employees as a deciding factor in their acceptance of a job at Chubb.”

And while Los Angeles-based defense manufacturer Northrop Grumman has faced opposition from religious groups, and some employees, for offering coverage of domestic partners under its benefits plan, it says it is committed to the practice.

NG revised its domestic partner benefits program when it acquired TRW in December 2002. Jonathan Eubanks, an NG business manager who chairs the company's GLBT group, Gays, Lesbians and Friends Network (GLAFnet), says NG’s current domestic partner benefits program sprang from a “real team effort between the HR community, the benefits community and GLAFnet.” Among other issues, the team helped clarify that not only an employee’s dependents, but also an employee's partner’s dependents, will be covered under the plan.

Equalizing Benefits

Though benefits experts say nothing in state or federal law prevents companies from grossing up the income of an employee with partner benefits to compensate for the tax hit on imputed income, companies that do so are few.

“Grossing up is an expensive proposition for the employer,” according to Scott Mezistrano, senior manager of government relations at the American Payroll Association, an industry group that represents payroll professionals. Along with covering payroll taxes on the imputed income from the benefits, the employer must pay an additional amount toward grossing up the income to compensate, plus payroll taxes on the “gross up” amount.

Employers that have considered, but rejected, the practice of grossing up income to compensate for the employee’s share of the tax hit cite various reasons for doing so.

Eli Lilly & Co., a drug manufacturer, and the defense firm Raytheon Co. chose against grossing up, in part because their competitors weren't, according to company officials. Teresa Chapin, Eli Lilly’s U.S. benefits leader, also cited concerns about the company providing a higher level of benefit to employees with domestic partners than to others. Such a disparity in benefit value might violate the Employee Retirement Income Security Act of 1974 (ERISA), according to John Brody, benefits design manager for a New York energy firm.

Plus, observed Rose Umile, Raytheon’s senior manager of employee benefits, “There wasn't a huge groundswell here to do anything. Our employees weren't asking.”

Pending federal legislation that would make health benefits for domestic partners tax exempt, however, does have some corporate support. Helga Ying, Levi Strauss’ director of worldwide government affairs and public policy, speaks for many others when she says that joining the Business Coalition for Benefits Tax Equity was “the right thing to do.”

“It’s important that all of our employees are treated fairly and equally,” Ying said.

Moreover, amending the tax law would reduce the employer’s payroll taxes, so “it makes good business sense,” she said.

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