

## Benefit Fact Sheet

### What is it?

The value, or premium equivalent, of employer provided Domestic Partner (DP) healthcare coverage generally must be included in the earned income of the employee for Federal Income tax purposes. Employers are required to report the value of employer provided coverage to the employee as "imputed income" when a DP is not recognized as a dependent for tax purposes. This imputed income can be reported incrementally on employee paychecks or can be handled as a one time entry on Form W-2.

Employer provided coverage includes both:

- Direct contributions made by the employer toward the cost of DP coverage; and
- Pre-tax contributions made by the employee for his/her DP.

The value of DP coverage may not be taxable for Federal Income tax purposes if the DP is recognized as a common-law spouse or is considered an IRS qualified dependent. To be an IRS qualified dependent, the DP must at a minimum meet the following criteria: 1) the domestic partner receives 50% of his or her support from the taxpayer, 2) the individual must reside with the employee for the tax year at issue and 3) the domestic partner is a member of the taxpayer's household, as defined by the IRS.

In California, if a domestic partnership has been properly registered with the Secretary of the State of California, the value of DP coverage is not taxable for California Personal Income Tax purposes. Although it is included in the employee's taxable wage base for purposes of Unemployment Insurance and California State Disability Insurance.

If a plan extends eligibility to the children of a Domestic Partner and those children are not otherwise dependents of the employee, the tax treatment will generally be the same as for coverage provided to the Domestic Partner.

Tax laws vary by state. Employers should work with their payroll providers and tax counsel to ensure that deductions are properly established.

### What types of employers offer it?

There are numerous states with mandates that require employers to offer [Domestic Partner benefits](#). Many employers chose to voluntarily offer domestic partner benefits to support their current employees and to retain and attract a talented workforce. Any employer that offers Domestic Partner coverage, whether voluntary or by state mandate, is responsible for properly reporting any income associated with the coverage.

### What are the critical underwriting or participation requirements?

- If the employer offers DP coverage, will the employer make a contribution toward the cost of coverage? If yes, the employer must address the imputed income requirements.
- IRS private letter rulings have indicated that the amount of imputed income should be based on the fair market value of the benefit provided. For fully-insured plans, many employers will establish the fair market value as being equal to the cost of employee only coverage. For self-insured plans, the fair market value may be determined by using the COBRA rate less any administrative fees.
- Domestic partner benefits are still subject to imputed income even if adding the domestic partner does not increase the premium.

### Relevant Legislation

California AB 26 was signed into law in 1999. This bill marked the first time a state legislature created a domestic partnership statute without the intervention of the courts. It authorized health insurance coverage for domestic partners of public employees.

In 2001, California (under AB 25) expanded upon AB 26 by exempting employer paid coverage for qualified domestic partnerships from inclusion in taxable wages for California Personal Income Tax purposes. A domestic partnership was

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defined by the state of California as a legal relationship available to same sex couples, and to certain opposite sex couples in which at least one party is 62 years of age or older.

Due to the passage of California AB 205, the California Domestic Partner Rights and Responsibilities Act in 2003, domestic partnerships were to have the same rights and responsibilities as spouses under state law. All insurance policies issued in California require registered domestic partners and spouses to receive equal benefits.

In 2006 and 2007, Senate Bills 1827 and 105 added additional provisions requiring registered domestic partners to file their state income tax returns using the same rules applicable to married individuals. While registered domestic partners are now required to file using the “married filing joint” or “married filing separate” status for their California tax returns, federal law still prohibits registered domestic partners to file a joint return.

### What's new in this area?

In an effort to relieve some of the additional tax burden that employees with domestic partners face, some employers are beginning to institute “gross up or true up” policies for those employees affected. This entails grossing-up an employee’s salary to account for the additional value of the cost of the domestic partner’s coverage to ensure there is no tax impact to the employee. According to the Human Rights Campaign, as of January 2011, there are twelve for-profit employers who have a gross up policy, including Cisco Systems and Facebook, Inc. The expectation is that this number will continue to increase.

### How much does it cost?

In addition to any soft costs associated with payroll reporting administration, the employer is subject to FICA matching on the value of employer provided DP coverage.

### Informational link(s)

- [Overview of Domestic Partner Benefits](#)
- [Domestic Partner Taxation](#) (SF Human Rights Commission)
- [CA Franchise Tax Board: Domestic Partner Taxation](#)

### Notes

#### Example 1 - Most Domestic Partners

	Annual Insurance Premium	Premium Subject to Federal Income Taxes	Subject to CA State Income Taxes
Employee Contributions	\$1,200	\$1,200	\$1,200
Employer Contributions	\$3,600	\$3,600	\$3,600
<b>Total</b>	<b>\$4,800</b>	<b>\$4,800</b>	<b>\$4,800*</b>

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### Example 2 - Domestic Partner registered with Secretary of the State of California

	Annual Insurance Premium	Premium Subject to Federal Income Taxes	Subject to CA State Income Taxes
Employee Contributions	\$1,200	\$1,200	\$0
Employer Contributions	\$3,600	\$3,600	\$0
<b>Total</b>	<b>\$4,800</b>	<b>\$4,800</b>	<b>\$0</b>

This Fact Sheet is designed to provide a general overview of the benefit program, service, or regulatory act it describes. The information included in this document is not a substitute for legal or professional opinion relative to a plan sponsor's particular fact pattern. Your ArlenGroup consultant can answer more specific questions relative to its application for your organization. A menu of additional topics is available online at: [www.arlengroup.com/facts](http://www.arlengroup.com/facts).