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Labor Law Bulletin

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NEW JERSEY DOMESTIC PARTNERSHIP ACT BECOMES EFFECTIVE

The New Jersey Domestic Partnership Act ("DPA") became effective July 10, 2004. Under the DPA, same-sex couples where both partners are over age 18, and opposite-sex couples where both partners are over age 62, may register with the State as Domestic Partners and receive a Certificate of Domestic Partnership. The impact on employers who have employees in New Jersey will not be great, but it is worth noting the following.

Nondiscrimination

The DPA amends the New Jersey Law Against Discrimination ("LAD") to prohibit discrimination in employment because of an individual's participation in a domestic partnership or status as a domestic partner. While this will have little practical impact, because of New Jersey's already-existing prohibitions against discrimination on the basis of sexual orientation and on the basis of marital status (including the status of not being married), employers should amend their non-discrimination policies to include domestic partnership status and should add a few words about non-discrimination based on domestic partnership to all EEO training.

Note: as with the other protections found in the LAD, the nondiscrimination provisions regarding domestic partners apply to all New Jersey-based employees, regardless of the location of the employer's principal place of business.

Health/Hospitalization Insurance

The DPA does not impose on employers a requirement to provide dependent health coverage for an employee's domestic partner. However, it requires any "group health insurer that provides hospital or medical expense benefits under a policy that is delivered, issued, executed or renewed ... or approved for issuance or renewal ... on or after the effective date of [the DPA]" to provide dependent coverage for same-sex (but not opposite-sex) domestic partners if dependent coverage is available for others. Employers who carry group health insurance policies that are delivered, executed or renewed—terms that may have to be defined in the future—in New Jersey should be sure that their carriers provide this coverage upon renewal after July 10, and should amend their SPDs and other benefits information to reflect the availability of this benefit. It may be desirable to require employees who apply for dependent coverage for a domestic partner to provide a copy of a duly issued Certificate of Domestic Partnership.

This requirement applies only to issuers of insurance policies, and it applies only if such policies are delivered, issued, executed or renewed in New Jersey. Thus, a New York-based employer who has employees in New Jersey but whose insurance is issued to it in New York will likely not find that its insurer will provide health benefits to the domestic partners of the New Jersey employees.

The requirement regarding insurance policies does not apply to employers who self-insure (because of ERISA preemption). Such employers may decide voluntarily to extend health benefits to employees' domestic partners, but there is no requirement that they do so. Employers who provide such benefits on a voluntary basis are free to use their own definition of "domestic partner," and may elect not to require the employee to furnish proof that the domestic partnership has been certified by the State.

Employers should be aware that there are different tax consequences for employees who get dependent coverage for their domestic partners. The value of such benefits is considered taxable income to the employee for federal income tax purposes unless the domestic partner qualifies as a dependent of the employee under federal law, which

will be very rare because the requirements for establishing as a dependent an adult who is unrelated by blood or through marriage are extremely difficult to meet. It is a good idea to alert employees who elect health coverage for their domestic partners (whether under a renewal insurance policy or under a voluntary plan) to this fact.

It also appears that, unlike spousal benefits, health benefits extended to domestic partners of employees are not reimbursable under a "flexible spending account" or "cafeteria plan" unless the domestic partner is a dependent under federal tax law definitions.

Other Benefits

Since only health and hospital benefits are expressly addressed by the DPA, it is unclear whether the non-discrimination aspects of the Act, as incorporated in the LAD, will require employers to reexamine all of the various benefits that are afforded to employees in relation to their family situations. The DPA expressly does not make domestic partner status the equivalent of spousal status for many purposes, although it provides what amounts to equivalency with respect to hospital visitation and health care decisions and certain tax benefits. Until there is clarification, employers will have to decide whether to provide such equivalency under such policies as family medical leave (the New Jersey Family Medical Leave Act is not amended by the DPA), bereavement leave and certain beneficiary rights. Many employers already provide such benefits to employees' same-sex and sometimes opposite-sex domestic partners, using their own definitions of domestic partnership. Whether it ultimately will be determined that such benefits are required by the DPA and the LAD amendment, it would probably be prudent to provide such benefits to those who have Certificates of Domestic Partnership, and to amend applicable policies accordingly. Finally, it should be noted that the DPA does contain several benefit provisions that apply to public employers only, and that affect state employers slightly differently than they affect city or county employers.

If you have any questions about the impact of DPA or any related questions, call your Vedder Price attorney or:

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