



Are employers required to provide benefits to same-sex domestic partners? The Oregon Insurance Division certainly thinks so!

April, 2008

Same-sex domestic partners are now entitled to the equivalent rights and benefits that married couples enjoy under Oregon law. Because the Insurance Code and most policies contain certain requirements that apply to "spouses" (e.g., survivor benefits are to be issued to a deceased claimant's "spouse"), many employers are now asking whether same-sex domestic partners should be considered spouses under their benefits policies.

The Insurance Division's Position

According to the Oregon Insurance Division, the answer is "yes." Insurance policies issued or delivered in Oregon must treat same-sex domestic partnerships like marriages, and same-sex domestic partners like spouses. Insurers may not require greater proof of the existence of a same-sex domestic partnership than they require of the existence of a marriage.

The April 1, 2008 Deadline

Depending on when the insurance policy form(s) were filed and/or approved by the State, employers are required to provide same-sex domestic partner benefits according to the following schedule:

- The mandate takes effect for policies issued or renewed on or after April 1, 2008, if those policies are based on forms approved by the Insurance Division before February 4, 2008.
- The mandate takes effect for policies issued or renewed on or after January 1, 2008, if those policies are based on forms approved by the Insurance Division on or after February 4, 2008.

What About ERISA Plans?

The Insurance Division has taken the position that same-sex domestic partner benefits apply to commercial insurance plans regardless of whether or not the employer's plan is governed by ERISA. Whether the Insurance Division is exceeding its authority in taking this position with respect to ERISA plans is subject to question. However, until the courts or the legislature have the opportunity to clarify this issue, the most prudent course for employers to take is to treat same-sex domestic partners as spouses with regard to both ERISA and non-ERISA plans.

In light of the Division's position on this complex issue, now would be a good time to review your employment policies and benefits plans to ascertain compliance with this rapidly changing area of the law. If you have any questions about same-sex domestic partner laws and their effect on employment or benefits issues, please contact one of Bullivant Houser Bailey's experienced employment and employee benefits attorneys.