

# BENEFITS INSIGHT

## The Illinois Civil Union Law & Your Employee Benefits Plan – *Update!*

By Noreen Blair, Benefits Account Executive

*Brought to you by the insurance specialists at Wine Sergi & Company LLC, 225 Smith Road, St. Charles, Illinois. For more information, please contact us at (630) 513-6600.*

In our May newsletter, we sent out an article highlighting the newly passed Illinois Religious Freedom and Civil Union Act (IRFCUA). Since the release of our article, both the IL Dept. of Revenue and the IL Dept. of Insurance have issued further guidance, some of which have a direct impact on the taxation of a civil partner and answers some general questions regarding the application of the law.

This article is an update to our previously sent article.

### **Tax Implications:**

At the time of our article, it was a widely held belief that the Illinois state income tax would be treated differently than the Federal income tax in regards to civil unions. The IL Department of Revenue issued the following announcement:

*“The new law permitting Civil Unions did not change the Illinois income tax laws. Under the income tax act, you may file a joint Illinois income tax return only if you file a joint federal income tax return. Married couples and partners to civil unions who file separate federal returns may not file joint Illinois returns.”*

What this means is benefits to the civil union partner may have to be treated as imputed income, just like at the federal level. The exception to this would be if the civil union spouse is a “qualifying child or relative” under the IRS tax code 152.

Stipulations of a “qualifying child or relative” include the following:

- Support – partner, spouse or child receives more than half of his or her financial support from the employee.
- Residence – partner, spouse or child lived with the employee for the entire calendar year (Jan 1– Dec 31), excluding any absences due to vacation, education or military service.
- Citizenship – partner, spouse or child is a citizen of the US or a resident of the US, Canada or Mexico.

It could be possible that a civil union spouse would not qualify for the favorable tax status, while the child of the spouse could.

### **Additional Information:**

During the month of June a special enrollment period was granted for any employee to add a spouse of civil union granted in another state. It was implied that an employer should notify employees of their enrollment rights. If you have not notified your employees, we recommend you do so as soon as possible. Included in this newsletter is a sample Civil Union Special Notice that you can use to send to your employees. By doing so, you give them 30 days to notify you of any new civil union spouse they may want to add. The notice protect you in the event the employee says they were unaware of their rights.

## What Should We Do Now?

All health plans, with the exception of self-insured, have to extend coverage to civil union spouses the same as married spouses. However all state and local government and school district plans must extend coverage to civil union spouses whether or not they are self-funded.

We recommend you take the following steps to ensure compliance with the law.

1. Review your current benefits & health plans and determine which benefits you will need to extend to civil union partners.
2. Review any open enrollment materials, communications or plan documents that may need modification to include civil union partners. Send out the special notice, if you haven't done so already.
3. Review any tax liability you may have by extending coverage to civil union partners.
4. Review any leave of absence policies or other policies to insure the definition of "spouse" is extended to civil union partners where applicable.

If you have a self insured plan that is not part of a state of local government or a school district you do not have to offer coverage to civil union spouses.

Consider any employees living in other states that have validly formed civil unions or same-sex marriages. They are eligible for the same benefits as long as the employer is located in Illinois.

Remember you can not request a civil union spouse "prove" their civil union status any more than you do a newly married spouse. So you can require an affidavit of dependent status to be filled out only if you require it of all dependents. We are attaching a sample of the affidavit to this newsletter.

As always, our team is available to answer any questions or give you further guidance.

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### Sources:

Rebecca L. Dobbs, Esq. – Smith Admundsen article "CIVIL UNIONS IN ILLINOIS – WHAT DOES IT MEAN FOR YOUR EMPLOYEE BENEFIT PLANS?" SHRM website "Illinois' Civil Union Law Has Broad Implication for Employers" written 2/11/2011 by Jeremy Stewart, Littler Mendelson P.C. BC/BS News for Producers 4/6/2011; Larry Grudzien – Illinois Civil Union Law Webinar