

# BENEFITS INSIGHT

## The Illinois Civil Union Law & Your Employee Benefits Plan

*By Noreen Blair, Benefits Account Executive*

On January 31, 2011 Governor Quinn signed S.B. 1716, Illinois Religious Freedom and Civil Union Act (IRFCUA).

This new law, which goes into effect June 1, 2011, mandates that “[a] party to civil union is entitled to the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses, whether they derive from statute, administrative rule, policy, common law, or any other source of civil or criminal law”. The law also extends to previously unrecognized marriages, civil union or similar legal relationships, including same-sex couples, which were entered into in another state. As long as they meet the qualifications of the Civil Union Act. The law does exclude common-law marriages.

### Which Benefits Are Impacted?

The law will have some impact on current employer sponsored benefits. Which benefits and how much impact will depend entirely on the benefits you provide. Even though ERISA pre-empts state laws when applied to an ERISA benefit plan, states are still allowed to mandate or regulate the administration of the insurance. Below are some of the ways your benefits plan could be impacted:

- For fully insured employer-sponsored health plans that allow coverage of spousal dependents, the plan is required to extend the definition of “spouse” to include civil union partners.

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- Groups of any size are also subject to the Illinois Spousal Continuation Law which allows spouses to continue benefits for up to 2 years in the event of benefits being lost due to death of the employee, divorce from the employee or retirement of the employee. Further, if the spouse is over age 55 the Illinois Spousal Continuation Law can potentially provide him or her with the ability to continue coverage until Medicare eligible. The definition of “spouse” will now include civil union partners.
- The Illinois Family Military Leave Act requires that Illinois employers provide unpaid leave to individuals if certain members of their family are called away on military duty. The law includes spouses, and it is possible because of the IRFCUA that it will include civil union partners.

### What Benefits are Unaffected?

The IRFCUA is a state law that will impact other state laws. However, it holds no jurisdiction over Federal laws. Employers need to be mindful of this as they continue to administer their benefit programs. In general, the following benefits are not subject to IRFCUA:

- COBRA is a federal law, allowing spouses and dependents to continue coverage under certain qualifying events. COBRA will not extend to civil union partners.

- 401k plans are regulated by Federal law and as such private employers will not need to extend federally-regulated pension benefits or retirement plans to civil union partners
  - Tax benefits, such as the ability to pay for premiums pre-tax, will not extend to civil union partners. Premiums for the civil union partner must be collected after-tax. In addition, any benefit received by the civil union partner must be counted towards the employee's federal taxable wages when determining the proper federal taxes to withhold. (Employers will have to calculate the fair market value of the benefit)
2. Review any open enrollment materials, communications or plan documents that may need modification to include civil union partners.
  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.

We anticipate further guidance from the carriers as well. Blue Cross/Blue Shield has stated effective June 1, 2011 they will extend the definition of spouse to include civil union partners. However, at this time there will not be a special enrollment to bring onto plans existing Civil Union Partners. (News for Producers, April 6 2011). This may change as further guidance is issued from IDOI.

Should you have any questions, or need further guidance your benefits team at Wine Sergi is ready and willing to assist you.

## What Should We Do Now?

The Illinois Department of Insurance has yet to issue guidance on IRFCUA and the impact on insurance policies & coverage's. We anticipate them posting a list of FAQ's on their website in the very near future.

In the meantime, we at Wine Sergi, as your trusted advisor, 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.

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### Sources:

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