

EMPIRE STATE PRIDE AGENDA

TALKING POINTS: Equalizing Access to Insurance Benefits

- [Benefits/HR Name], I wanted to talk to you about revising our Domestic Partner Affidavit so that we can better equalize access to insurance benefits for all employees regardless of sexual orientation.
- Our Firm has such a strong commitment to diversity and inclusion, and that commitment should be reflected in our provision of benefits to all employees.
- Right now, our process requires employees in same-sex couples to provide information about the nature and quality of their relationships in order to get access to health insurance benefits for their domestic partners.
- I wanted to make some recommendations so that access to insurance benefits is less burdensome for employees in same-sex relationships.
- [review Model DP Benefits Eligibility Requirements]
- As you can see, these model requirements allow an employee to register his/her partner for benefits without needing to provide information related to the nature and quality of their relationship.
- I assume that straight, married employees need only provide at most a copy of their marriage license to obtain insurance benefits for their spouses. Is that the case?
- Similarly, employees who have registered for a civil union or domestic partnership should need to provide at most only a copy of the license or registration certificate to enroll a partner in benefits.
- OK. I also assume that straight, married employees aren't asked to provide [*cite items in your Firm's DP Affidavit that should be deleted, e.g., copies of their leases or deed or bank account statements; information about how long they have lived together before getting married; statements about intent to remain together indefinitely, how they run their household, etc*]?
- So looking again at the Model DP requirements, and in keeping with our Firm's commitment to equal treatment of LGBT employees, I'm asking that all references to [*cite the requirements the Firm should delete*] be deleted. Since heterosexual married employees aren't asked to attest to any of these things to "prove" the legitimacy of their relationship, it is unequal for the Firm to require LGBT employees to adhere to a higher standard and meet certain requirements about the way they live their lives in order to protect their partners with health insurance.
- Can we talk about what steps need to be taken in order to equalize access to benefits for all employees?



POSSIBLE QUESTIONS

Straight employees are also eligible for Domestic Partner benefits, so I'm not sure why you're so focused on gay and lesbian employees. All employees need to provide this information in order to enroll their domestic partner in benefits.

That's absolutely true. But the burden of disclosures around the nature and quality of a relationship disproportionately impacts employees in same-sex relationships who are foreclosed from the option of marriage in most of the country. For example, even if they are legally married in a jurisdiction that permits it, employees in same-sex relationships still are subject to unequal treatment because their relationships aren't recognized under federal tax law. It might also be worth thinking about why domestic partnership requirements for either same-sex or opposite sex couples should be much higher than for married couples. Do we trust these employees less? Do their families count less than others? Does the Firm have an interest in promoting one particular type of family over another?

OK, so why not just require employees to either marry, or get a civil union or domestic partnership, and only offer benefits to those with that kind of legally recognized status? Then we won't need any kind of Affidavit form at all.

Unfortunately, civil unions, domestic partnerships and even marriages do not confer full state and federal rights on same-sex couples (or their children, if any) who enter into these arrangements. Many LGBT people may have legitimate reasons to choose not to enter into a status that does not accord full legal rights. For example, they may face adverse economic consequences due to conflicting state and federal tax treatments since federal law does not recognize marriages between same-sex couples. Or, if an employee's same-sex partner is in the military, entering into a legally recognized status may jeopardize the partner's career.

This decision should not be perceived as a reflection on their level of commitment to their partners. The Firm should not require LGBT employees to take steps that might not be in their best legal interest just to obtain insurance benefits coverage for their partners.

I get it. But if we don't require [proof of financial interdependence, proof of how long a couple has lived together, etc], how can we be sure that employees aren't "gaming the system."

First, I would hope that we trust our employees enough to not question whether they are trying to add someone to our benefits plan if they are not a true significant other.

Second, people can 'game the system' through marriage just as easily as they could by claiming to be in another type of relationship. Any of it is fraud, and could be legally actionable.

Lastly, I'm not sure why an employee would want to 'game the system' in a way that would increase their income tax burden.

I'm proposing that we require employees to either produce a government-issued license of some sort, or have them attest that they are of the age of consent, aren't related by blood,



aren't in a marriage or partnership with anyone else, and are in a caring, committed relationship with their partner. Does our Firm really want to be in the business of then judging the nature or quality of someone's relationship – how long they have been together, what their financial arrangements are, etc -- before allowing access to health insurance?

[If the line of questioning around gaming the system persists:

*[If your Firm **does not** require straight employees to provide a marriage license or other proof of marriage:* Straight employees can just say they're married, without offering anything other than their word, and they get benefits for their significant other AND the tax advantage of spousal benefits. They have much more of an incentive to 'game' the system, and yet the Firm relies simply on their word. All I am asking for is similar respect for our LGBT employees.]

*[If your Firm **does** require straight employees to provide a marriage license or other proof of marriage:* Let's face it – any two people of the opposite sex can obtain a marriage license and get married, as long as they're not married to anyone else. Obtaining a marriage license doesn't require proof of *financial interdependence, a length of time the couple has lived together, etc.* A straight employee can just as easily "game the system," and yet the Firm still extends marital benefits basically on the word of the employee. All I am asking for is similar respect for our LGBT employees.]

What's wrong with asking an employee to attest that they plan to be together indefinitely? After all, when people get married, they talk about "til death do us part."

First of all, not all wedding vows mention fidelity or permanency, and those attestations are certainly not required to obtain a marriage license. And there are a couple of other concerns about that requirement. Like a lot of the other requirements on our Affidavit, that requirement inherently serves to question the veracity of the relationship. "Is this just a two month fling, or is it a 'real' relationship?" As a matter of equal access, the Firm doesn't question the permanence of a straight employee's marriage. When John Smith contacts Benefits because he wants to enroll his third wife in our health insurance plan, I am sure that no one says to him, "Now wait a minute John. Are you going to stay with this wife? Given your track record, we're not convinced that we should add her to the benefits plan."

I think our insurer requires this language, so I don't think we'll be able to change it.

Actually, my understanding is that none of this language is legally required. In fact, some Firms in our industry offer access to health insurance to domestic partners without any affidavit or attestations whatsoever.

Most of the requirements in our Affidavit are probably legacy requirements dating to the initial inception of DP benefits. Back then, the Affidavits tried to "approximate" marriage, and the language reflects that attempt. But relationships – gay and straight -- have evolved since the 80's, as has our understanding and respect for the relationships that LGBT individuals share with their partners.



We provide so much business to [name of insurer], I can't imagine they would protest if we told them that our Firm is modifying the requirements to allow access to benefits for our employees' domestic partners. It certainly is worth inquiring about.

What about married same-sex couples? Are these requirements OK for them as well?

Under current New York law, there is no difference between married same-sex spouses and married opposite-sex spouses. So we shouldn't require employees who are legally married to a same-sex spouse to do anything more than married employees in opposite-sex relationships have to do to add a spouse to their health benefits. The only way married same-sex couples must be treated differently is that, because of the federal law, health benefits must be treated as imputed income for tax purposes. But all married employees should be entitled to spousal benefits regardless of whether their spouse is of the same or opposite sex. Frankly, it would be disrespectful to relegate employees with same-sex spouses to "domestic partner" benefits when they have a legal spouse.

The Empire State Pride Agenda Foundation is the non-partisan 501(c)(3) research, education and advocacy organization affiliated with the Empire State Pride Agenda, Inc. The Foundation advances the Pride Agenda's public policy goals by: educating public officials and policymakers; building coalitions and mobilizing allies; and organizing, empowering and educating the LGBT community in urban, suburban and rural communities across New York State.