



# Domestic Partner Forms

## **DEFINITION OF DOMESTIC PARTNERSHIP**

Domestic Partners are defined as two adults, of the same or opposite sex, engaged in a spouse-like relationship characterized by mutual caring and dependency. To qualify for Domestic Partners coverage, both individuals must meet each of the following qualifications as well as the specific criteria outlined on the Declaration of Domestic Partnership form:

- Individuals are at least eighteen (18) years of age and mentally competent to consent to a contract.
- Individuals are each other's sole Domestic Partner and intend to remain so indefinitely.
- Individuals are not married to or legally separated from anyone else.
- Individuals are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which they reside.
- Individuals are living together in the same residence and intend to do so indefinitely.
- Individuals are engaged in a committed relationship of mutual caring and support and are jointly responsible for each other's common welfare and living expenses.
- The employer's proof of interdependence must include at least three of the following:
  - Common ownership of real property (joint deed or mortgage agreement) or a common leasehold interest in property
  - Common ownership of a motor vehicle
  - Driver's license listing a common address
  - Proof of joint bank accounts or credit accounts

- Proof of designation as the primary beneficiary for life insurance or retirement benefits, or primary beneficiary designation under a partner's will
  - Assignment of a durable property power of attorney or health care power of attorney
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- Partners must live together on a continuous basis for at least 6 months immediately prior to the date of the Declaration.
  - Individuals are not in the relationship solely for the purpose of obtaining coverage.
  - Dependent children- Coverage is available to dependent children of Domestic Partners provided they are unmarried, primarily dependent on the employee for support, living with the employee in a regular parent-child relationship and meet the age/school requirements contained in the plan of benefits.

¶ 5.2[a](2)(ii) *Domestic Partners.*

It is now clear that domestic partners (i.e., domestic partners of unmarried employees) are not entitled to COBRA rights as a matter of law. The Defense of Marriage Act [PL 104-199, 110 Stat 2419], enacted on September 21, 1996, unambiguously removes any interpretive question on this issue, as follows:

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or wife. [1 USC § 7, added by the Defense of Marriage Act, § 3]

Thus, domestic partners are not recognized as legal spouses under federal law. Because the proposed COBRA regulations define *qualified beneficiary* to include only the *spouse* or *dependent child* of the *covered employee*, and as a result of the Defense of Marriage Act, an employee's domestic partner is not a qualified beneficiary under COBRA. [Prop Treas Reg § 1.162-26, Q&A-15; see IRC § 4980B(g)(1)(A); ERISA § 607(3)(A)] Previously, an argument could be made that a nonmarried domestic partner who is recognized as a spouse under the common-law marriage rules of a state would be within the class of spouses entitled to COBRA rights. The IRS previously had acknowledged that the marital status of individuals, as determined under state law, was recognized in the administration of tax laws and that a domestic partner could be recognized as a spouse under a state's common-law marriage rules. [See Ltr Rul 9034048 (May 29, 1980), modified by Ltr Ruls 9111018 (Dec 14, 1990), 9109060 (Dec 6, 1990), 9231062 (May 7, 1992), 9317033 (Jan 29, 1993), 9603011 (Oct 18, 1995)] However, the most recent private letter ruling on this subject expressly defers to the Defense of Marriage Act in concluding that domestic partners are not recognized as spouses under the federal tax laws. [Ltr Rul 9717018 (Jan 22, 1997)] If an employer voluntarily extends non-COBRA continuation coverage to an employee's unmarried domestic partner, many complicated issues would arise. For example, the employer would have to address the question of whether, upon a termination of such a "spousal" relationship (which would, of course, need to be defined), the unmarried domestic partner should be afforded the same coverage that COBRA provides to a married couple upon divorce or legal separation. Moreover, a question exists as to whether an insurance company would agree to underwrite continuation coverage not mandated by COBRA.

## Declaration Of Domestic Partnership

### I. DECLARATION:

We, \_\_\_\_\_ and \_\_\_\_\_, each  
(employee-print name) (domestic partner-print name)  
certify and declare that we are domestic partners in accordance with the following criteria:

### II. STATUS

1. We affirm that this domestic partnership began on or about   /  /  .
2. We are each other's sole domestic partner, and we intend to remain so indefinitely.
3. Neither of us is married to or legally separated from anyone else nor have had another domestic partner within the prior six months.
4. We are both at least eighteen (18) years of age and mentally competent to consent to contract.
5. We are not related by blood to a degree of closeness that would prohibit legal marriage in the state in which we legally reside.
6. We cohabit and reside together in the same residence and intend to do so indefinitely. We have resided in the same household for at least six months.
7. We are engaged in a committed relationship of mutual caring and support and are jointly responsible for our common welfare and living expenses. Our interdependence is demonstrated by at least three of the following (please check appropriate items):
  - Common ownership of real property (joint deed or mortgage agreement) or a common leasehold interest in property
  - Common ownership of a motor vehicle
  - Driver's license listing a common address
  - Proof of joint bank accounts or credit accounts
  - Proof of designation as the primary beneficiary for life insurance or retirement benefits, or primary beneficiary designation under a partner's will
  - Assignment of a durable property power of attorney or health care power of attorney
1. We are not in this relationship solely for the purpose of obtaining benefits coverage.

### III. DEPENDENT CHILDREN OF DOMESTIC PARTNER

We understand that dependent children of \_\_\_\_\_ (domestic partner-print name) are eligible for coverage when they are:

- unmarried,
- primarily dependent on the employee for support, and
- meet the age/school and all eligibility requirements of the plan of benefits.

### IV. CHANGE IN DOMESTIC PARTNERSHIP:

1. We have an obligation to notify \_\_\_\_\_ (employer-print name) by filing a Declaration of Termination of Domestic Partnership if there is any change in our domestic partnership status as attested to in this Declaration that would terminate this Declaration (e.g., due to death of a partner, a change in residence of one partner, termination of the relationship, etc.).



**DECLARATION OF TERMINATION OF DOMESTIC PARTNERSHIP**

I, \_\_\_\_\_ (employee- print name), certify and declare that:

\_\_\_\_\_ (former domestic partner- print name) and I are no longer domestic partners as of \_\_\_\_/\_\_\_\_/\_\_\_\_. I understand that coverage for this individual will terminate on this date.

1. I make and file this Declaration of Termination in order to cancel the Declaration of Domestic Partnership filed by me with \_\_\_\_\_ (employer- print name) on \_\_\_\_/\_\_\_\_/\_\_\_\_.
2. Termination of the Declaration of Domestic Partnership is due to:

- Termination of domestic partnership
- Change of residence
- Marriage to another person
- No longer jointly responsible for each other's common welfare and living expenses
- Death of domestic partner

I understand that another Declaration of Domestic Partnership cannot be filed until six (6) months from the date of the relationship ends (as indicated above).

In the event that termination of this relationship is not due to the death of my domestic partner, I will mail my former domestic partner a copy of this notice at:

\_\_\_\_\_  
(former domestic partner new address)

I affirm, under penalty of perjury, that the above statements are true and correct.

\_\_\_\_\_  
Signature of employee

\_\_\_\_/\_\_\_\_/\_\_\_\_