

School Law Update

OCTOBER 20, 2017

Domestic Partnership Benefits Eliminated

The 2017–2019 Wisconsin Biennial Budget (2017 Wisconsin Act 59) made changes to statutory provisions that permitted domestic partners of local government unit employees to access various insurance and other employee benefits through private plans and plans sponsored by the State of Wisconsin Department of Employee Trust Funds (ETF). A “local government unit” is defined by statute to include a “political subdivision of this state, a special purpose district in this state, an agency or corporation of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing.” This includes school districts, technical colleges, counties, cities, villages and towns.

Act 59 also eliminated the state’s domestic partnership registry and limits people from forming future domestic partnerships under Wis. Stat., Chapters 40 and 770. The stated purpose for the change was that the legalization of same-sex marriage made the legal status of domestic partners duplicative and if a person involved in a domestic partnership wanted to secure various legal benefits, including those arising from an employment relationship, the avenue to do so would be through marriage

Act 59 amended Chapter 40 to preclude any insurance plan administered through ETF (health, life, duty disability, supplemental benefits, and long-term care) from providing coverage to domestic partners. WRS death, life insurance, and deferred compensation benefits will continue to be paid pursuant to the most recent, valid beneficiary designation on file with ETF, including domestic partners. If there is no designation on file, life insurance death benefits will be paid to an employee’s registered, surviving domestic partner according to standard sequence. Duty disability benefits which begin prior to January 1, 2018, will be paid to a domestic partner, but not benefits that begin after that date. ETF sent out a letter to its participating employers and members further explaining the impact of Act 59. It can be found at: <http://etf.wi.gov/publications/et7385.pdf>.

For those local government units which maintain employee benefit plans not provided through ETF, Act 59 amended Chapter 66 to preclude a “local government unit” from providing hospital, surgical, and other health and accident and life insurance to domestic partners. The Chapter 66 amendments also provide that a local government unit may not provide benefits to domestic partners under an “employee benefit plan” as defined by 29 USC §1002 (3) of ERISA. This would generally include flexible spending account benefits, long-term disability benefits (unless funded as a payroll practice), AD&D coverage, group term life insurance coverage, and any health plan benefits (e.g., major medical, dental, prescription drug, or vision).

The Chapter 66 changes not only impact contractual plans, but also an employer's employment policies that come within the definition of an "employment benefit plan" under ERISA. Examples include post-retirement sick leave conversion provisions that provide for the payment of health insurance premiums to beneficiaries after the death of the retiree or parts of Section 125 plans. The Chapter 66 changes prohibit the payment of these types of benefits to domestic partners. Therefore, affected employers will want to review their policies with legal counsel to determine if any changes are required.

The Act 59 changes become effective at different times:

- The changes to ETF-sponsored plans become effective January 1, 2018. ETF is taking steps to modify their plans to terminate domestic partnership coverage as of that date.
- The Chapter 66 changes are effective the first day of the seventh month after publication (April 1, 2018), but first apply to any benefit contract in place that covers domestic partnerships at such time as that contract expires or is terminated, extended, modified or renewed. This timing is dependent on the plan year renewal date or the date of any mid-contract changes which occur after April 1, 2018. Thus, if a local government unit has a health insurance plan in place on January 1, 2018, with a renewal date of January 1, 2019, that covers domestic partners, Act 59 first impacts the plan as of January 1, 2019, to require removal of domestic partner coverage.
- Employment policies that provide a non-contractual "employee benefit plan" are subject to Act 59 as of April 1, 2018, and local government unit employer policies must be changed by that date.

Local government unit employers should confer with their plan sponsors (ETF or otherwise) and legal counsel to set in motion the changes necessitated by Act 59, including amending plan eligibility provisions, providing appropriate COBRA notices, addressing open enrollment issues, amending employment policies, and appropriately communicating any changes to their employees.

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