

## **New Washington State law extends domestic partnership rights in the workplace**

Washington employers may soon be required to treat registered domestic partners just as they would married spouses with regard to many employment related matters and benefits. The new law builds on original legislation passed in 2007, which allowed all same-sex couples and any different sex-couples with at least one partner over the age of 62 to register as a domestic partnership.

Since 2007 the law has provided certain rights to registered domestic partners, including hospital visitation rights, medical decision-making and health information rights, the ability to authorize autopsies and organ donation and intestate\* inheritance rights. The law was expanded in 2008 to give registered domestic partners community property rights, certain rights under trust and probate laws and spousal rights under guardianship and power of attorney laws.

In May 2009, Governor Gregoire approved a measure, ESSSB 5688 (often referred to as the “Everything but Marriage” Act,) which amended many areas of Washington law and gave registered domestic partners all of the rights and responsibilities of married couples, to the extent not in conflict with federal law. The affected areas of law range from labor and employment rights to pensions and other public employee benefits.

Expanded rights would include:

- The right to use sick leave and/or vacation to care for a domestic partner as one would a spouse
- The right to wages and benefits when a domestic partner is injured, and to unpaid wages upon the death of the domestic partner
- The right to unemployment and disability insurance benefits
- The right to workers’ compensation benefits provided a spouse
- Insurance rights, including rights under group policies

There are some instances, however, in which federal laws, which do not recognize same-sex unions, may result in different treatment of domestic partners. For example:

**1. Family and Medical Leave:** The Washington Family Leave Act (WFLA) requires an employer to allow an employee to take leave to care for his or her spouse with a serious health condition. This leave typically runs concurrently with any leave the employee may be entitled to under the federal Family and Medical Leave Act (FMLA). If the 2009 Act goes into effect, an employee in a registered domestic partnership would be entitled to the same leave rights under the WFLA to care for a domestic partner with a serious health condition.

The, FMLA does **not**, however, provide coverage for domestic partner care, and also prohibits designation of non-FMLA qualifying leave as FMLA leave. As a result, leave taken under WFLA to care for a seriously ill domestic partner would be **in addition to**, and not concurrent with, any leave the employee would be entitled to under FMLA.

**2. Insurance Coverage:** Under the “Everything but Marriage” Act, domestic partners would be covered by various laws dealing with insurance. The Act would require insurance companies to include coverage for registered domestic partners in policies issued to employers. Although the law would not require employers to pay for insurance premiums for benefits for domestic partners, if an employer currently pays for benefits for an employee’s spouse, the employer may face disparate treatment claims if the same benefits are not covered for an employee’s domestic partner.

**3. COBRA Continuation Coverage:** Federal COBRA rights, including subsidy rights pursuant to the American Recovery and Reinvestment Act of 2009 are available for spouses. However, because federal law does not recognize domestic partnerships, even when employer-sponsored plans cover such partners, federal COBRA rights, including subsidy rights, do not apply to domestic partners. Employers may choose, however, to extend COBRA-equivalent rights to domestic partners.

The “Everything but Marriage” Act was set to take effect on July 26, 2009. Washington Values Alliance, a group opposing the bill, has filed Referendum 71, seeking to overturn the expansion of the domestic partnership law. The implementation date of the new law will be delayed until the results of the November election are certified in December, 2009. All aspects of the 2007 and 2008 domestic partnership laws remain in full force and effect.

\* NOTE: Intestate refers to when someone dies without a will. Under Washington law, if someone dies intestate, there is a statute that directs how and to whom the estate is to be distributed. Under the new DP law, a domestic partner would be the equivalent of a spouse for distribution purposes.