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## **Civil Union Act Requires Insurance Policies to Conform Immediately**

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Effective June 1, 2011, the Religious Freedom Protection and Civil Union Act (the “Civil Union Act”) permits same-sex and opposite sex couples to enter into a civil union in Illinois. Just before the effective date, the Illinois Department of Insurance issued FAQs that address some of the unanswered questions that lingered in the wake of the Civil Union Act’s passage.

Prior to last week’s guidance, most assumed that the Civil Union Act would require fully-insured group health plans to offer coverage to partners in a civil union, but it was not clear whether this requirement would take effect immediately or upon renewal of the policy. The FAQs clarify that all insurance policies issued on or after June 1, 2011 must immediately conform to the Civil Union Act. Further, all policies in-force are deemed to be automatically amended to conform. Please note, as discussed in our earlier alert, self-funded group health plans are not impacted by the Civil Union Act.

### **Special Enrollment Period for Insured Group Health Plans**

Companies sponsoring fully-insured health plans in Illinois must offer civil union partners coverage that is identical to that offered to married couples and must allow participants to add their civil union partners during an open enrollment period or during a 30-day special enrollment period, which must begin:

- June 1, 2011 for civil unions previously entered into in another state, but now recognized in Illinois;
- As of the civil union effective date, for newly formed civil unions; or
- After a civil union partner loses other coverage.

Coverage for civil union partners is not required to become effective until the beginning of the next month following enrollment.

### **Coverage for Non-Dependent Civil Union Partners Still Taxable**

Federal law does not recognize same-sex marriages, domestic partnerships or civil unions. As a result, employers must “impute income” for any employer-sponsored health coverage provided to a civil union partner who is not the employee’s tax dependent. Currently, the state of Illinois follows the federal tax code, so employers should impute income for federal and state purposes. Although additional guidance may be issued by the Illinois Department of Revenue (IDR) on the taxation of health coverage for civil union partners, on June 2, 2011, the IDR announced that the new Civil Union Act “did not change the Illinois income tax laws” and civil union partners may file a joint Illinois income tax return only if they file a joint federal return.

## **Continuation of Coverage Rights for Civil Union Partners**

COBRA is a federal law that requires plans to offer continued health coverage to spouses upon dissolution of marriage, and to spouses and dependent children upon certain other qualifying events. As federal law does not recognize civil unions, COBRA does not require companies to provide continuation coverage to civil union partners upon dissolution of a civil union.

Illinois separately requires all fully-insured group health plans to provide continuation coverage to spouses upon dissolution of marriage and other qualifying events. As a result of the Civil Union Act, companies sponsoring fully-insured health plans in Illinois will now be required to offer continuation coverage for civil union partners who were enrolled in such plans at the time of a qualifying event (termination of employment, death, dissolution of civil union, reduction of hours, etc.). Companies should be aware that the Illinois continuation of coverage laws vary slightly from COBRA in a number of ways. The Illinois Department of Insurance provides a side-by-side comparison of the laws, available at <http://insurance.illinois.gov/healthinsurance/continueDepChild.asp>. Please note, as of the date of publication, this chart has not been updated to reflect that civil union partners receive the same benefit and rights as spouses.

Further, public employee insurance continuation provisions for spouses of retiring or disabled public sector employees, as well as spousal benefits under the Public Safety Employee Benefits Act, would similarly apply to civil union partners.

## **Civil Union Act Impacts Public Sector Pensions But Not Private Sector Retirement Plans**

Private sector retirement plans are governed by ERISA, so the Civil Union Act will not impact these plans.

Public sector pensions are impacted by the Civil Union Act, however. This means that generally, civil union partners will be entitled to any survivor benefits provided to spouses under such plans. There are a few limitations though. For instance, as with spouses, the civil union partner of a police officer is only entitled to survivor benefits if the civil union took effect prior to retirement. Further, a civil union partner of a firefighter may only receive survivor benefits if the civil union took effect at least one year prior to the firefighter's death. For these purposes, a civil union entered into in another state, but now recognized in Illinois, shall be considered to have taken effect as of June 1, 2011.