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Client Alert:
Employee Benefits

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New California Laws Affect Employer-Sponsored Group Health Plans

Overview of the New Laws

California adopted two new laws that may directly affect California employers providing employee group health plan coverage. The first requires the employer to continue health coverage for employees on pregnancy disability leave, for up to four months. The second expands the circumstances under which a group health insurance policy covering employees of a California employer is prohibited from discriminating against domestic partners.

What Does the New Pregnancy Disability Law Require?

Under prior law, California employers with 5 or more employees were prohibited from refusing to allow a female employee disabled by pregnancy, childbirth, or a related medical condition to take an unpaid leave of absence "for a reasonable time of up to 4 months" before returning to work, unless the refusal is based upon a bona fide occupational qualification. The new law now prohibits those employers from refusing to maintain the employee's coverage under the employer's group health plan, for an employee who takes that leave after January 1, 2012. If the employee was responsible for a portion of the group health plan premiums prior to the leave, the employer may continue to require her to make such payments during the leave. Although the federal Family and Medical Leave Act (FMLA) provides a right to the continuation of group health insurance coverage for certain types of leaves of absence, FMLA does not apply to everyone (i.e., it applies only to employees of employers with 50 or more employees within a 75 mile radius, who were employed at least one year with a minimum of 1,250 hours worked). Those covered under the California Family Rights Act (CFRA) are also guaranteed the continuation of benefits during leave, but the CFRA excludes leave for pregnancy-related conditions. The actual length of the applicable leave period is determined on a case-by-case basis, relying on medical certification from a physician. The employer may also require reasonable notice of the start date of the leave, and the duration. The four-month leave period applies in each 12-month period.

An employer may recover its cost of coverage from the employee if both of the following occur:

- The employee fails to return after the end of the leave; and
- The employee's failure to return from leave is for a reason other than:
  - The employee taking leave under the CFRA; or
  - The continuation, onset, or recurrence of a health condition that entitles the employee to coverage during leave under this law, due to circumstances beyond her control.

California employers must also provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider. Further, they must temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician, where that transfer can be reasonably accommodated.

What Does the New Domestic Partner Non-discrimination Law Require?

Under prior California law, a health insurance policy providing group coverage has to offer coverage for the registered domestic partner of an employee equal to the coverage offered to the spouse of an employee. The new law provides that an insurance policy also may not discriminate in coverage between spouses or domestic partners of a different sex, and spouses or domestic partners of the same sex.

The prior law applied to a group health insurance policy marketed, issued, or delivered to a California resident, regardless of where the contract or master group policyholder is located, *except* for a policy issued outside of California to an employer whose principal place of business and which has the majority of its employees located outside of California. Effective January 1, 2012, the new law applies to a group health insurance policy marketed, issued, or delivered to a California resident, regardless of where the contract or master group policyholder is located, and the exception noted above *no longer* applies.

If an insurer requires married employees to provide verification of marital status as a condition for spousal coverage, the insurer may require that the employee verify the status of the domestic partnership by providing a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State or an equivalent document issued by a local agency of the state, another state, or a local agency of another state under which the partnership was created. The insurer may also require that the employee notify the insurer upon the termination of the domestic partnership, if it requires a married employee to provide verification upon dissolution of the marriage.

What Should Group Health Plan Sponsors Do Now?

The new laws will add to the administrative burdens of group health plan sponsors, and may increase their cost of providing coverage. California employers that provide group health plan coverage for their employees should contact their insurer to discuss implementing these changes concerning the domestic partner non-discrimination law, and should contact their insurer or third party administrator to discuss implementing the new eligibility requirements under the pregnancy disability law. These new laws may require changes to the employer's leave of absence policy, as well as changes to the group health plan document, summary plan description, health insurance policy, and other documents describing group health plan eligibility. Contact an attorney from the Butzel Long Employee Benefits Practice Group to discuss the steps necessary to comply with the laws and to fully protect the plan sponsor.

If you have any employee benefit questions, please contact your regular Butzel Long attorney, a member of the Butzel Long Employee Benefits Practice Group, or the author of this Client Alert.

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