



Domestic Partner Coverage Questions and Answers

1. Why are we offering coverage to domestic partners?

The City wants to provide benefit options that meet the needs of our employees. Offering coverage for Domestic Partners through the Maine Municipal Employee Health Trust (MMEHT) is one way we are achieving that goal.

2. What are the eligibility requirements for MMEHT Domestic Partner coverage?

Employees are required to certify by affidavit or declaration that they meet the requirements for a valid domestic partnership. MMEHT uses a form based on the requirements of the insurer, Blue Cross Blue Shield of Maine:

- At least 18 years of age, and mentally competent to contract.
- May not be legally married to or separated from another person.
- Must be sole domestic partners, with intent to remain sole partners.
- Lived together for at least 12 months.
- Not related by blood to a degree of closeness that would prohibit marriage in the State of Maine.
- Neither partner is covered by another individual or has been covered by another individual as a domestic partner or a legal spouse in a [health] or [dental] or [vision] insurance policy in the preceding 12 months.
- Jointly responsible for each other's common welfare through a joint deed, joint mortgage, joint lease, joint credit card, joint bank account, and/or powers of attorney.

3. In which benefit plans does the Trust allow enrollment of eligible domestic partners?

MMEHT allows eligible domestic partners to enroll in the health, dental and vision plans only. The City includes a Health Reimbursement Arrangement (HRA) through Flores as part of the medical insurance package. Domestic Partners enrolled in the MMEHT medical plan are also enrolled in the HRA.

4. When can I enroll my eligible domestic partner?

Eligible domestic partners are allowed to enroll for coverage at the following dates, assuming a valid affidavit: 1) upon the employee's initial employment date, 2) at annual Open Enrollment, or 3) if a portability situation occurs. Portability would

occur when an eligible domestic partner of an employee loses his/her group health coverage from another employer.

5. Will this cover my Domestic Partner's children?

Domestic partner coverage only extends to a domestic partner's dependent children if the children are the legal tax dependents of the employee. You have to be the biological parent or have a court appointed legal relationship with the children, such as guardianship or adoption.

6. What are the tax implications of covering my Domestic Partner with medical insurance?

The federal government does not recognize Domestic Partnerships. Therefore, Federal IRS regulations require that medical coverage for Domestic Partners is taxed differently than coverage for an employee's spouse. You pay 15% of your premium, and the City pays 85%. The portion of insurance premium that covers you and your legal dependents (individuals you can claim on your taxes), can be taken from your paycheck pre-tax. The additional amount of your premium that covers the Domestic partner is paid after-tax. In addition, the IRS considers the City's portion of your premium difference "earned income," so you are taxed on that amount as though it were additional wages.

7. Are Domestic Partners eligible for benefit coverage under the HRA?

Yes, but IRS regulations require that the value of that coverage is taxed as earned income. See below for details.

8. Are Domestic Partners eligible for benefit coverage under the FSA?

No. Medical FSA funds cannot be used for domestic partners, as the IRS states these funds can only be used for IRS tax dependents.

9. Does this change anything for me regarding the City's Buyback Program?

Yes! If you are eligible for Domestic Partner coverage, you are eligible to enroll in the City's Buyback Program. You must submit an MMEHT Affidavit along with your Buyback form. Assuming a valid affidavit, you can enroll in the buyback at your initial employment date, at annual Open Enrollment, and if there is a qualifying event or portability situation.

10. Are Domestic Partners eligible for COBRA?

No, because COBRA is regulated by the federal government, which does not recognize domestic partnerships. MMEHT does provide COBRA-like coverage for up to eighteen months under the following situations: 1) when the employee's coverage is terminated,

2) when the employee retires, 3) when the employee dies and 4) when the employee dissolves the domestic partner relationship.

11. Is domestic partner coverage available to partners of active employees only? Or is it also available to partners of retirees (under and over age 65)?

Domestic partner coverage is available to eligible partners of active employees only. It is not available to retirees or surviving spouses.

**POTENTIAL TAX IMPLICATIONS
OF PROVIDING DOMESTIC PARTNER BENEFITS
from the Maine Municipal Health Trust**

There are certain potential tax implications to both the employee and the employer, of which all parties should be aware before domestic partner benefits are offered. Most of these implications are discussed in Section 152 of the Internal Revenue Code. Some of the major points shall be summarized here.

Internal Revenue Code Section 152(a) defines a “dependent” for federal tax purposes. This definition generally requires a blood relationship (including adoption) or a marital relationship, as well as a support test. In most situations, a domestic partner will not meet the Code requirements for the definition of a “dependent”. In fact, a domestic partner will only meet the Code definition of a “dependent” if all of the following requirements are met:

- the taxpayer (in this case, the employee) provides over 50% of the domestic partner’s support;
- the domestic partner’s principal place of abode is that of the taxpayer/employee, and the domestic partner is a member of the taxpayer/employee’s “household”; and
- the relationship of the taxpayer/employee and the domestic partner does not violate state or local law. Under the Internal Revenue Code Section 152 (b)(5), if the relationship violates state or local law, the domestic partner cannot be considered to be a member of the employee’s household, and therefore cannot be considered to be a dependent.

If a domestic partner does not meet the above requirements, and therefore does not meet the IRS requirements to be considered a tax-qualified dependent, then any domestic partner benefits provided by the employer will be considered taxable benefits to the employee. If the employer pays any portion of the premium (for health and/or dental insurance) for the domestic partner’s coverage, the amount which the employer pays for that coverage is includible in the employee’s income under Internal Revenue Code Section 61. So, for example, if the employer pays 50% of the cost of dependent coverage for an employee’s domestic partner, that amount paid by the employer must be included in the employee’s income.

In addition, any such amounts includible in the employee's income due to coverage of a domestic partner constitute wages under Section 3401(a) of the Internal Revenue Code, and are subject to income tax withholding, as well as FICA and FUTA taxes. This means that any employer that provides domestic partner benefits must put in place a procedural arrangement to ensure that W-2 tax forms are prepared for those employees who elect domestic partner coverage. These W-2 tax forms must include the value of the imputed income arising out of the domestic partner benefits. The employer must also be sure to make the necessary withholding and payroll tax payments.

Another issue which must be addressed by employers offering domestic partner coverage concerns payment of premiums by employees under a cafeteria plan or other pre-tax arrangements. If the employee pays all or any portion of the cost for domestic partner coverage, that portion of the premium must be paid on an after-tax basis, unless the domestic partner meets the dependent definition in Code Section 152. In a Private Letter Ruling issued by the IRS in 1995 (IRS Private Letter Ruling 9603011, October 18, 1995), the IRS ruled that, if a domestic partner is neither a spouse or dependent (as defined earlier in this memo), then:

- premiums paid by the employer for domestic partner coverage must be included in the employee's income, as already described; and
- the employee cannot pay any part of the premium for the domestic partner's coverage on a pre-tax basis. Thus, even if the employer has a plan in place for employees to pay their portion of health and/or dental insurance premiums on a pre-tax basis, employees would not be able to pay for domestic partner premiums pre-tax. Any contribution which the employee makes toward the cost of coverage for his/her domestic partner must be made on an after-tax basis.

Because of all the potential tax implications and complications arising from the offering of domestic partner coverage, the Health Trust strongly recommends that any employer group offering such coverage consult with its payroll administrator, tax consultant and/or attorney, and (if applicable) cafeteria plan administrator.

THIS DISCLOSURE IS NOT INTENDED TO CONSTITUTE TAX ADVICE, BUT RATHER IS INTENDED TO HIGHLIGHT SOME OF THE COMPLEX TAX AND ADMINISTRATIVE ISSUES ARISING OUT OF DOMESTIC PARTNER BENEFIT COVERAGE. EMPLOYERS ARE ENCOURAGED TO CONSULT THEIR OWN ACCOUNTANTS FOR SPECIFIC TAX ADVICE.

Domestic Partner Coverage in HRAs: Tax Implications

The City of Bath and MMEHT allow employees to enroll a domestic partner and their dependents when certain requirements are met. To remain consistent with our benefits package, we include HRA benefits for domestic partners. This notice is to inform you of IRS regulations regarding HRA coverage for domestic partners.

What are the regulations about HRA coverage for domestic partners?

HRA reimbursements are considered tax-exempt for employees and their federally qualified dependents, which includes spouses and children under age 26. Domestic Partners and their children who do not qualify as the employee's tax dependents are not eligible for tax-free reimbursements from an HRA. If HRA coverage is provided to non-dependents, IRS regulations require the employee to be taxed on the value of that coverage.

Why do employees need to be aware of this?

Employees with medical coverage for their Domestic Partner will be taxed on the value of the HRA benefit. The value of your Domestic Partner's HRA coverage will be considered "income." The tax will be automatically calculated and deducted from your paycheck.

Example from Group Dynamic: *John enrolls himself and his domestic partner Sarah in the group health plan. They each file separate tax returns and Sarah is not a federally qualified dependent of John. John's employer also offers an HRA with an \$800 benefit for deductible expenses, up to \$1600 for a 2-person or family enrollee. John and Sarah are enrolled in the \$1600 benefit level of the HRA.*

*The 2-Person HRA COBRA premium rate is calculated using a percentage of expected use of the benefit. GDI uses an industry standard of 30% expected use. The COBRA rate is therefore calculated as follows: **\$1600 benefit X 30% = \$480 ÷ 12 months = \$40 + 2% COBRA Admin = \$40.80 monthly COBRA premium***

This amount needs to be imputed into income. John's employer will add \$40 (do not include 2% COBRA administration) to his taxable income on a monthly basis so that he is taxed on the value of the HRA coverage. Now Sarah is eligible for tax-free reimbursements from the HRA plan.

If you have detailed questions about the tax implications for covering your Domestic Partner, please contact a tax advisor.



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AFFIDAVIT OF DOMESTIC PARTNERSHIP

We, _____ and _____ (domestic partners),

after being first duly sworn depose and attest to the following:

- We are at least 18 years of age and we are mentally competent to contract.
- Neither of us is legally married to or separated from another person.
- We are sole domestic partners, we have been sole domestic partners since _____ (month/day/year), and we intend to remain sole partners.
- We have been legally domiciled together for at least [12] months.
- We are not related by blood to a degree of closeness that would prohibit marriage in the State of Maine.
- Neither of us has covered another individual or has been covered by another individual as a domestic partner or a legal spouse in a [health] or [dental] or [vision] insurance policy in the preceding [12] months. We understand that domestic partners cannot enroll together for [12] months following the termination of coverage of a prior domestic partner or legal spouse.
- We are jointly responsible for each other's common welfare as evidenced through a joint deed, joint mortgage, joint lease, joint credit card, joint bank account, and/or powers of attorney authorizing each of us to act on behalf of the other. Maine Municipal Employees Health Trust reserves the right to request, at a future time, one of the previously mentioned documents.
- We understand that a domestic partner enrolled as a dependent ceases to be an eligible member on the first of the month following the termination of a domestic partnership and that we are required to submit an Application of Change within 31 days of the termination of a domestic partnership.

 Date Subscriber Signature Print Name

 Date Domestic Partner Signature Print Name

 STATE OF _____, ss

On this _____ day of _____, 20____, personally appeared the above named
 _____ and _____, and swore to the truth of the foregoing. Before
 me,

 Notary Public/Attorney at Law My Commission Expires: _____

We understand that domestic partners are subject to the other eligibility provisions of the Health Trust benefit plans.

We agree to notify the Maine Municipal Employees Health Trust and the employee's employer within thirty (30) days of the termination of our domestic partnership. A written termination statement shall be provided and shall affirm that the partnership is terminated and that a copy of the termination statement has been mailed to the other partner.

We certify, under penalty of perjury, that the foregoing is true and correct. We, the undersigned employee and the Domestic Partner, understand that falsification of information contained in this Affidavit may cause immediate termination of Health Trust health and/or dental plan coverage, and may subject us to civil action to recover any losses, including reasonable attorney's fees incurred by the Maine Municipal Employees Health Trust for benefits provided under its health and/or dental plans. We also understand that falsification of information contained in this Affidavit may lead to disciplinary action, up to and including immediate termination of the employee's employment.

Signature of Employee _____
Date

Signature of Domestic Partner _____
Date

A. Dependent Child Certification

I, _____ certify that my Partner's child(ren) named below meet the following requirement:
Subscriber Name

1. I, the subscriber, have a court-appointed legal relationship with the child(ren) (i.e., adoption, guardianship), and my Partner is the biological parent, or legal guardian of the child(ren).

Partner's Dependent Child(ren)

_____ Last Name	_____ First Name	_____ M.I.
_____ Last Name	_____ First Name	_____ M.I.
_____ Last Name	_____ First Name	_____ M.I.
_____ Last Name	_____ First Name	_____ M.I.

I understand that falsely certifying as to dependent's eligibility or failure to inform the Health Trust when a dependent no longer meets applicable eligibility requirements may cause immediate termination of Health Trust health and/or dental plan coverage, and may subject me to civil action to recover any losses, including reasonable attorney's fees incurred by the Maine Municipal Employees Health Trust for benefits paid on behalf of the dependent child(ren) named above under its health and/or dental plans. I also understand that falsely certifying as to a dependent's eligibility or failure to inform my employer when a dependent no longer meets applicable eligibility requirements may result in disciplinary action, up to and including immediate termination of employment.

Signature of Employee _____
Date

Approved by the Maine Municipal Employees Health Trust

By: _____
Signature _____
Date

Title

The following section is for certification to an employer of the legal tax dependent status of a domestic partner.

B. Partner Certification as a Tax-Qualified Dependent

Based on consultation with a tax advisor, I certify that the previously named person whom I am enrolling for coverage is my legal tax dependent as defined in the IRS Code Section 152. I understand that falsification of this certification of dependency status may result in disciplinary action, up to and including immediate termination of employment, as well as potential charges of tax fraud. I agree to notify my employer immediately of any change in this tax status.

By: _____
Signature of Employee

Date