



## **DOMESTIC PARTNER BENEFITS**

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### **UNDER CHAPTER 40 OF THE WISCONSIN STATUTES**

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## **GENERAL QUESTIONS ABOUT DOMESTIC PARTNERSHIP BENEFITS**

### **1. When is the Chapter 40 domestic partner benefits law effective?**

The new law is effective January 1, 2010.

### **2. What benefits are available to domestic partners?**

All benefit programs administered by the Department of Employee Trust Funds will be available to qualifying domestic partners of state employees, and domestic partners of employees of participating local government employers. In order to qualify, domestic partners must meet the conditions for a domestic partnership listed in Chapter 40 of Wisconsin law and submit an *Affidavit of Domestic Partnership* (ET-2371) to ETF. Active employees should give a copy of the Affidavit to their employer.

Please note that coverage of your domestic partner in some benefit programs, such as health insurance, may have tax consequences due to federal tax law. Please consult your tax professional for more information.

### **3. What benefits are available to the children of domestic partners?**

The children of your domestic partner can be covered by your health insurance if you select the family coverage option. Children of your domestic partner can also receive life insurance coverage under the "Spouse and Dependent" coverage option.

### **4. Are benefits available to domestic partners of represented employees?**

Yes, domestic partner benefits are equally available to partners of represented and non-represented employees.

### **5. Are domestic partners of retirees eligible for benefits?**

Yes, domestic partner benefits are available to partners of retirees.

### **6. Are benefits available to domestic partners of employees and retirees who live outside Wisconsin?**

Yes, the new law applies regardless of where you reside. The law provides domestic partners with the same benefit choices that are available to married employees/retirees living outside Wisconsin.

**7. Can a same-sex domestic partner qualify for benefits? What about an opposite-sex domestic partner?**

Yes, under the domestic partner benefits provisions in Chapter 40 of the Wisconsin statutes, a domestic partner can be the same sex or opposite sex.

**8. What are the qualifications for a Chapter 40 domestic partnership?**

To be eligible for domestic partner benefits, you and your partner must meet the definition of a domestic partnership in Wis. Stat. § 40.02 (21d):

- You are both at least 18 years old and legally competent to enter into a contract
- Neither of you are married or in a domestic partnership with another person
- You are not related by blood in any way that would prohibit marriage under Wis. Stat. § 765.03
- You consider yourselves to be members of each other's immediate family
- You both agree to be responsible for each other's basic living expenses
- You share a common residence with your domestic partner.
  - Two individuals may share a common residence even if any of the following applies:
    - Only one of the individuals has legal ownership of the residence.
    - One or both of the individuals have one or more additional residences not shared with the other individual.
    - One of the individuals leaves the common residence with the intent to return.

The Chapter 40 definition of domestic partnership is different and separate from the definition of domestic partnership used for enrollment in the domestic partner registry under Wisconsin Chapter 770.

**9. If I die, what Chapter 40 benefits could be available to my surviving domestic partner?**

*Retirement:* Surviving domestic partner is eligible to receive any available survivor benefits, unless benefits are directed to another party via a beneficiary designation, or to a different named survivor on a retirement application.

*Duty Disability:* Surviving domestic partner may be eligible to receive survivor benefits under Wis. Stat. § 40.65 if specific criteria are met, until the domestic partner marries or creates another domestic partnership.

*Health Insurance:* Surviving domestic partner and surviving dependents may be eligible to continue health insurance. See Question 49 for more information.

*Life Insurance:* Surviving domestic partner is eligible to receive life insurance proceeds, unless the benefits are directed to another party via a beneficiary designation.

Coverage for domestic partners and/or dependents who are insured under the Spouse and Dependent plan will cease 90 days after the death of the employee. Domestic partners or other dependents who were insured continuously for the entire six months preceding termination of coverage are eligible to convert to an individual policy without evidence of insurability. Application must be made within 90 days after the employee's death. See *Conversion Information - Life Insurance (ET-2306)* for more information.

**10. I have a registered domestic partnership with the State of Wisconsin. Is my domestic partner eligible for benefits because we are already on the registry?**

No, registering as domestic partners on the Chapter 770 domestic partnership registry does not qualify your domestic partner for Chapter 40 benefits. The law on retirement, duty disability and insurance benefits for domestic partners is not linked with the state domestic partner registry. If you want your domestic partner to qualify for Chapter 40 benefit purposes, you must file an *Affidavit of Domestic Partnership* form (ET-2371) with ETF. For health insurance benefits, you must fill out an application for the desired benefit program and submit the application along with a copy of the Affidavit.

**11. I was legally married to my same-sex partner in the state we lived in before coming to Wisconsin. Is my same-sex spouse automatically considered to be my domestic partner?**

Wisconsin law does not currently recognize same-sex marriages. Therefore, your spouse is not automatically considered your domestic partner. You can obtain coverage as a domestic partner only if you meet the statutory requirements for a domestic partnership in Chapter 40 of Wisconsin laws and file an *Affidavit of Domestic Partnership* form (ET-2371) with ETF.

**12. My domestic partner and I share a house, but my domestic partner is in the National Guard and will be stationed overseas for a year. Are we still considered to be "sharing a common residence?"**

Yes, you are considered to be sharing a common residence in this situation if your domestic partner intends to return to your shared residence.

**13. My domestic partner does not live with me, but we plan to move into a house soon. Is my domestic partner eligible for benefits?**

No, your partner is not eligible if you do not yet live together. The law requires that you share a common residence. Assuming the other conditions for domestic partnership are met, your domestic partner would be eligible at the time that you move into the same household. Please see Question 8 for information about what qualifies as a common residence.

**14. My current domestic partnership was created in another state. Does my domestic partner automatically qualify for Chapter 40 benefits in Wisconsin?**

No, the Wisconsin law on Chapter 40 domestic partnership does not recognize partnerships created in another state. You must file an *Affidavit of Domestic Partnership* form (ET-2371) with ETF, certifying that you meet the requirements under Chapter 40 of Wisconsin law. You must also fill out applications for each benefit plan in which you wish to enroll your domestic partner.

**CREATING A DOMESTIC PARTNERSHIP FOR CHAPTER 40 BENEFITS**

**15. How do I obtain benefits for my domestic partner and his/her children?**

You must file an *Affidavit of Domestic Partnership* form (ET-2371) with ETF, certifying that you meet the requirements under Chapter 40 of Wisconsin law. You must also fill out applications for the benefit programs in which you would like to enroll your domestic partner. Contact your payroll and benefits representative or visit the ETF website for applications.

For the *It's Your Choice* enrollment period starting in October, you can submit the Affidavit to ETF and the *Group Health Insurance Application/Change* form (ET-2301) to your employer at the same time, with a copy of the Affidavit attached to the insurance application. For coverage to begin on January 1, 2010, ETF must receive your completed *Affidavit of Domestic Partnership* form (ET-2371) no later than December 30, 2009. Retirees should submit the Affidavit and health insurance application directly to ETF. ETF will send an acknowledgement of your Affidavit establishing the effective date of your Chapter 40 domestic partnership. Please see questions 44 and 45 for more information on enrolling in health insurance.

Note that for certain programs such as Duty Disability and retirement benefits, there are no applications for the domestic partner. However, it is vital that an *Affidavit of Domestic*

*Partnership* form (ET-2371) be on file at ETF so that the domestic partnership will have been established for any survivor benefits should the employee die.

**16. Do I need to provide proof of my domestic partnership?**

Normally, no proof is required other than to send an *Affidavit of Domestic Partnership* form (ET-2371) to ETF, which requires notarized signatures of both parties. However, if there is evidence at any time that raises a question as to the validity of the partnership, ETF may request additional documentation to demonstrate that you continue to meet the Chapter 40 definition of domestic partnership.

**17. What is an affidavit? Why is an ETF *Affidavit of Domestic Partnership* form required?**

The Chapter 40 domestic partner benefits law requires an affidavit. An affidavit is a written document made by a person who swears, under oath or by affirmation before a person with authority to take such an oath or affirmation, that the statements in the document are the truth. An affidavit that affirms domestic partnership is required to be on file as proof that you meet the requirements under the statute for domestic partnership. One important use of the affidavit is that it clearly records the domestic partnership for purposes of distributing any available survivor benefits to the domestic partner after the death of the employee.

**18. What is a notary? Why does the Affidavit need to be notarized?**

A notary, also known as a “notary public,” is a person that has been issued an appointment to serve the public as an impartial witness. Notaries can conduct a variety of functions, such as administering oaths, witnessing signatures, and certifying that a copy is authentic. You can often find a notary in your workplace or at most financial institutions. Notarization of the signatures on the *Affidavit of Domestic Partnership* form (ET-2371) ensures that the signatures on the document belong to the persons named in the affidavit. This process helps to protect your signature from being entered without your knowledge and safeguards against the submission of fraudulent affidavits.

**19. Do we both have to appear together before the notary to have the Affidavit notarized?**

Generally, yes. The Affidavit is designed so that both of you (or a person duly authorized to sign on your behalf) must appear before the notary together. Please see question 20 for information on using a Power of Attorney to sign for another person.

**20. My domestic partner is currently deployed overseas, and is not available to sign the Affidavit of Domestic Partnership with me before a notary. Is there any way that I can establish a Chapter 40 domestic partnership before my partner returns and is able to sign the Affidavit?**

If your partner granted Power of Attorney (POA) to you or to another individual that grants sufficiently broad powers to sign an Affidavit on his/her behalf, the POA can sign the Affidavit before the notary on your partner's behalf. The POA must sign his/her own name, then enter "(POA)" after his/her signature.

The person with POA will need to show a copy of the POA document to the notary to verify that your partner has granted the POA sufficient authority to sign such documents on your partner's behalf. You must also submit a copy of the POA document to ETF with your Affidavit for our records (a photocopy is sufficient).

**21. Is it permissible to submit the *Affidavit of Domestic Partnership* to ETF by fax or e-mail?**

Yes, ETF will accept the Affidavit of Domestic Partnership and the Affidavit of Termination of Domestic Partnership electronically, but the notary seal must be visible in the electronic copy. Please note that in accordance with ETF's administrative rules, ETF may reject, or treat as never received, any fax or e-mail if ETF has determined that the transmission is incomplete, illegible, or there is any doubt as to the authenticity of the document. The Affidavits must be complete, with date, signatures and notarization. ETF may request the original document if necessary.

**22. Can I submit an *Affidavit of Domestic Partnership* before January 1, 2010?**

You may submit an *Affidavit of Domestic Partnership* form (ET-2371) to ETF prior to January 1, 2010, but your domestic partner will not be considered eligible for benefits until the law's effective date of January 1, 2010. The effective date of any Affidavit submitted prior to January 1, 2010, will be January 1, 2010.

**23. What is the effective date of my domestic partner's benefits if we submit the Affidavit after January 1, 2010?**

If you submit a completed Affidavit after January 1, 2010, it is effective on the date it is received by ETF.

**24. How often does the *Affidavit of Domestic Partnership* need to be submitted?**

You must submit an *Affidavit of Domestic Partnership* form (ET-2371) to ETF only one time per domestic partnership. However, a copy of the Affidavit must be attached to any health insurance application you submit.

**25. When is the *Affidavit of Domestic Partnership* considered to be effective?**

For Chapter 40 benefit purposes, your domestic partnership becomes effective on January 1, 2010, or on the date that ETF receives your completed *Affidavit of Domestic Partnership* form (ET-2371), **whichever is later**. Therefore, if you are filling out a health insurance application and Affidavit for submission prior to the end of the year, your effective date of domestic partnership would be January 1, 2010, which is the date that the new law is effective.

Note that Affidavits that are missing the signature of either partner or are not notarized will be rejected, and the domestic partnership will not become effective until ETF has received a properly completed Affidavit.

**26. Do I need to file an *Affidavit of Domestic Partnership* even if I do not want to enroll my domestic partner in my health insurance?**

Yes, it is important that you submit an *Affidavit of Domestic Partnership* form (ET-2371) to ETF, even if you are not planning to put your domestic partner on your health insurance. If you do not file an Affidavit for a Chapter 40 domestic partnership, ETF will have no record that you have a domestic partner. The *Affidavit of Domestic Partnership* cannot be accepted after the date of death of the employee.

Without an Affidavit on file, there could be serious consequences for your domestic partner and his/her dependents in regard to their benefits. For example, without an Affidavit your domestic partner would not be eligible for WRS survivor benefits in the event that you die without having filed a beneficiary designation form with ETF designating your partner (even if you have registered your domestic partnership on the Chapter 770 registry).

**ENDING A DOMESTIC PARTNERSHIP UNDER CHAPTER 40**

**27. When does a domestic partnership under Chapter 40 end?**

A Chapter 40 domestic partnership ends when any of the following occur:

- One or both partners die;
- One or both partners get married;
- The partners stop sharing the same principal residence;

- Any of the qualifications listed in the definition of “domestic partnership” in Chapter 40 are found to be invalid or no longer in practice (See Question 8).
- ETF receives a notarized *Affidavit of Termination of Domestic Partnership* form (ET-2372) signed by at least one of the domestic partners;
- A new *Affidavit of Domestic Partnership* form (ET-2371) is received by ETF for a different partner. A new *Affidavit of Domestic Partnership* terminates the previous partnership and establishes a new domestic partnership.

ETF will determine the effective date of termination of the partnership based on the facts, such as the date of death of the domestic partner, date of marriage, date of receipt of new *Affidavit of Domestic Partnership* or Termination affidavit, etc. ETF may terminate a domestic partner’s benefits if there is evidence that the Chapter 40 definition of a domestic partnership is no longer met, even if ETF has not received an *Affidavit of Termination of Domestic Partnership* form (ET-2372).

**28. What actions do I need to take if my domestic partnership ends?**

If you have not already done so, file an *Affidavit of Termination of Domestic Partnership* form (ET-2372) with ETF within 30 days of the dissolution of your domestic partnership. Failure to promptly notify ETF about the dissolution of your domestic partnership could result in benefits being paid for coverage of the ex-partner that you could be required to reimburse. If your partner was the only other participant on your health insurance, you will need to promptly submit new health insurance application/change forms to change coverage levels from family to single coverage.

**29. What should I do if my opposite-sex domestic partner becomes my legal spouse?**

Notify ETF when your domestic partner becomes your legal spouse. You will also need to fill out new benefit application forms, as applicable, indicating that you now have a spouse.

**30. What should I do if my domestic partner dies?**

Notify ETF of your partner’s death. If your domestic partner was enrolled in your health insurance plan, you should submit a *Group Health Insurance Application/Change* form (ET-2301) removing your partner from coverage.

**31. My partner and I are on the domestic partner registry (Chapter 770) and also have an Affidavit on file for Chapter 40 domestic partnership benefits. We have terminated the registered domestic partnership. Do I need to do anything else to terminate benefits for my former domestic partner?**

Termination of a registered domestic partnership does not automatically terminate Chapter 40 benefits for your domestic partner. You must submit an *Affidavit of Termination of Domestic Partnership* form (ET-2372) to ETF. If your domestic partner was enrolled in your health insurance plan, you should submit a *Group Health Insurance Application/Change* form (ET-2301) and a copy of the Termination affidavit to your employer to remove your partner from your insurance coverage. Retirees should submit their forms directly to ETF. Failure to promptly notify ETF of the dissolution of your domestic partnership could result in overpayment of benefits to the former domestic partner that you may be required to reimburse.

New!  
Added  
10/9/09

**TAXES**

**32. How does the addition of my domestic partner and his/her eligible dependents to my group insurance affect my income taxes?**

The Internal Revenue Code (IRC) excludes from gross income the amounts paid by your employer toward your group health insurance premium for the employee, the employee's spouse and dependents. Federal law automatically treats your spouse and dependents as "tax dependents" for which the tax exclusion is permitted. However, under federal law, a domestic partner cannot qualify as a spouse for purposes of excluding employer-provided health benefits from the subscriber's taxable income.

Federal law does not automatically consider your domestic partner and his/her eligible dependents to be tax dependents. Unless your domestic partner qualifies as a tax dependent under IRC § 152, your employer must include in your gross income the fair market value of the group health insurance benefits provided to the partner and partner's eligible dependents. This is known as "imputed income." This may affect your taxable income and increase your tax liability.

If you are retired and paying your health premiums from your annuity or directly to the health plan for coverage that includes a non-tax dependent domestic partner and the partner's eligible dependents, there is no imputed income because there is no "employer share" and therefore no pre-tax payment of your health insurance premium. However, there is imputed income in the following situations:

- If your former employer was a state agency, and you are using accumulated sick leave conversion credits for coverage that includes a non-tax domestic partner and the partner's eligible dependents, ETF must include in your gross income the fair

market value of the group health insurance benefits provided to the partner and partner's eligible dependents.

- If your former employer was a local government employer and you are using accumulated sick leave conversion credits or your former employer is paying some portion of your health insurance premiums for coverage that includes a non-tax dependent domestic partner and the partner's eligible dependents, the local government employer will determine and manage any imputed income amounts.

**New!**

Added  
10/9/09

### **33. How is imputed income calculated?**

Imputed income amounts can be found on ETF's Web site at the following link: [http://etf.wi.gov/employers/benefit\\_programs\\_imputed\\_income.htm](http://etf.wi.gov/employers/benefit_programs_imputed_income.htm) More details will be provided as soon as they are available.

### **34. My insurance premium is deducted on a pre-tax basis. How is that affected?**

Your health insurance premium will continue to be deducted on a pre-tax basis. However, the fair market value of the portion of coverage attributable to a domestic partner or other dependent who does not qualify as a dependent under IRC Section 152 will be calculated and added to your gross pay as taxable income.

### **35. How can I determine if my domestic partner qualifies under the Internal Revenue Code as my tax dependent?**

Consult the guidelines in IRS Publication 501 for "qualifying relative." In general, the IRS requires that a qualifying relative meet four tests:

- The dependent does not meet the qualifying child tests
- The dependent must live with you all year as a member of your household
- The dependent's gross income must be less than \$3,500 for the year
- You must provide more than half of the dependent's support for the year.

The lists above should not be used as the sole determination of your dependent's tax status. These tests are described in detail in IRS Publication 501, which is available at the Internet Web site of the Internal Revenue Service.

### **36. What actions can I take to prevent imputed income if I can prove that my domestic partner is my tax dependent under federal law?**

If you are an active employee and your domestic partner is indeed your tax dependent, you should contact your employer's payroll and benefits specialist to determine what documentation is required to prevent imputed income. If you are retired, please contact the ETF Payments Section.

## **WISCONSIN RETIREMENT SYSTEM (WRS) BENEFITS**

### **37. Can I name my domestic partner as my beneficiary?**

Yes, there are no restrictions on who you name as your beneficiary. ETF will pay your WRS death benefits according to the most recent *Beneficiary Designation* form (ET-2320 or ET-2321) received prior to your death, regardless of any changes in your personal situation.

If you have never filed a *Beneficiary Designation* form (ET-2320 or ET-2321), your death benefits will be paid according to the Chapter 40 statutory standard sequence. If you have filed an *Affidavit of Domestic Partnership* form (ET-2371) with ETF, and the domestic partnership has not terminated prior to your death, your domestic partner is your primary beneficiary under standard sequence.

Note: Because a Chapter 40 domestic partnership cannot become effective before January 1, 2010, your domestic partner could not be your beneficiary under standard sequence until that date. However, a beneficiary designation becomes effective on the date that ETF receives it.

### **38. If I die after my WRS annuity begins, will my domestic partner receive my annuity after my death?**

Once your annuity begins, any death benefits are based on the annuity option you selected when you applied for retirement. If you select a guaranteed payment option, any remaining guaranteed payments will be paid according to the most recent beneficiary designation received by ETF prior to your death. If you have never filed a beneficiary designation form, any death benefits will be paid according to the statutory standard sequence. Your domestic partner is your primary beneficiary under standard sequence if you have filed an *Affidavit of Domestic Partnership* form (ET-2371) with ETF and the domestic partnership has not terminated prior to your death.

If you select a joint and survivor annuity option, your annuity continues for life to the one named survivor that you designate on your annuity application form. You can name your domestic partner as your named survivor when you apply.\*

Please note that unlike an ETF beneficiary designation form (which can be updated as often as you wish), you can never change your named survivor regardless of any changes in your personal situation.

\* See Question 40 for information about restrictions on designating your domestic partner as your named survivor.

**39. Does my domestic partner have to sign my retirement application when I retire (just like a spouse)?**

If your **Chapter 40** domestic partnership has been in effect for at least one full year immediately preceding the date your WRS annuity begins, you must either select a joint and survivor annuity option with your domestic partner as your named survivor **or** your domestic partner must sign your application consenting to an alternate option selection.\*

Note: Because January 1, 2010, is the first date on which a Chapter 40 domestic partnership can become effective, January 1, 2011 is the first possible annuity effective date on which a domestic partnership could be in force for a full year. Consequently, that is the first annuity effective date for which a domestic partner's signature would be required on the annuity application.

\* See Question 40 for information about restrictions on designating your domestic partner as your named survivor.

**40. Can I designate my domestic partner as my named survivor for my retirement annuity?**

The minimum distribution provisions in the Internal Revenue Code (IRC) restrict how much younger than the participant a **non-spouse** named survivor can be. Since federal law does not grant domestic partners the same status as spouses, a domestic partner is treated the same as any other person who is not a spouse. Consequently, there are restrictions on how much younger than you your domestic partner can be if you wish to select a joint and survivor annuity with your domestic partner as your named survivor.

To be eligible to select either the **75% Continued** or the **Reduced 25% on Death of Annuitant or Named Survivor** option, your domestic partner (or other non-spouse named survivor) cannot be more than 19 years younger than you. To be eligible to select either the **100% Continued** or the **100% Continued to Named Survivor with 180 Payments Guaranteed** option, your domestic partner cannot be more than 10 years younger than you.

In summary, if your domestic partner is more than 19 years younger than you, you are not eligible to select any joint and survivor option with your domestic partner designated as your named survivor. In this situation your domestic partner's signature on your annuity application is not required.

**41. If my domestic partnership ends, can my WRS account or annuity be divided by a Qualified Domestic Relations Order (QDRO) and a portion of my account or annuity be awarded to my former domestic partner?**

Yes, if your domestic partnership ends, WRS law now permits dividing WRS accounts and annuities between WRS participants and their (former) domestic partners. However, since federal law does not grant former domestic partners the same status as former spouses, under the Internal Revenue Code there are restrictions on when alternate payees who are former domestic partners can receive a benefit from their former partners' WRS accounts. There may also be significant tax consequences when these alternate payees actually receive a benefit. More information about the restrictions and tax consequences associated with domestic partner QDROs will be provided upon request.

**42. Can my domestic partner roll over my WRS death benefits into another retirement plan or account, such as an IRA?**

Yes, domestic partners can roll over WRS death benefits on the same basis as other non-spouse beneficiary rollovers. Under the Internal Revenue Code, domestic partners have the same status as other non-spouse beneficiaries for rollover purposes. Only the original participant's beneficiaries can roll over a death benefit; beneficiaries designated by a beneficiary are not eligible to roll over a death benefit.

Note: Only lump sum benefits and annuities certain payable for less than 10 years can be rolled over into another retirement plan or account. Death benefits from life annuities and annuities certain that are payable for 10 years or longer cannot be rolled over.

**HEALTH INSURANCE – ELIGIBILITY & ENROLLMENT**

**43. What health insurance plans are available to my domestic partner?**

The new law makes the same plans available to domestic partners that are available to legal spouses. The names of the specific plans are available in the "*It's Your Choice: Decision Guide*" booklet published each October.

**44. How do I enroll my domestic partner and his/her eligible dependent(s) for health insurance coverage to begin on January 1, 2010?**

You can add your domestic partner and his/her eligible dependents to your existing family coverage, or if you have single coverage in force, you change from single to family coverage. For coverage of these dependents to begin on January 1, 2010, ETF must

receive your completed *Affidavit of Domestic Partnership* form (ET-2371) no later than December 30, 2009. You must also file a *Group Health Insurance Application/Change* form (ET-2301) adding the dependent(s).

Employees must file the health insurance application and a copy of the Affidavit with their benefits/payroll/personnel office. Annuitants must file both the Affidavit and health insurance application with ETF. ETF must receive your Affidavit no later than December 30, 2009, for coverage to begin on January 1, 2010. Keep a copy of the Affidavit and application for your records.

ETF must receive your health insurance application within 30 days after the date that ETF receives your Affidavit. ETF will send an acknowledgement of your Affidavit establishing the effective date of your Chapter 40 domestic partnership. If your health insurance application is not received timely, coverage may not be available or may be limited to the Standard Plan with a 180-day waiting period for pre-existing conditions for your new dependent(s).

It is important to note that the fair market value of the health insurance benefits for dependents that you cannot claim on your taxes is considered imputed income and is subject to income tax withholding. See the Q&A section on Taxes and Question 46 for more information.

**45. How do I enroll my domestic partner and his/her eligible dependent(s) for health insurance coverage to be effective after January 1, 2010?**

After January 1, 2010, you can add your domestic partner and his/her eligible dependents to your coverage by filing a *Group Health Insurance Application/Change* form (ET-2301) form within 30 days of the date ETF receives your completed *Affidavit of Domestic Partnership* form (ET-2371). The effective date of coverage for him/her/them will be the date ETF received the completed Affidavit. If your health insurance application is not received during this 30 day enrollment window, coverage may be limited. See Question 46 for more information. Keep a copy of the Affidavit and health insurance application for your records.

It is important to note that the fair market value of the health insurance benefits for dependents that you cannot claim on your taxes is considered imputed income and is subject to income tax withholding. See Questions 32 through 36 and Question 46 for more information about taxes.

**46. Can adding my domestic partner and his/her eligible dependents to my health insurance affect my taxes?**

Yes, there are tax implications, if your domestic partner or his/her dependents are not your tax dependents. The fair market value of the health insurance benefit for your domestic partner and his/her dependents who you cannot claim as a tax dependent is considered “imputed income.” Imputed income is included in your gross income and is subject to federal and state taxation. Imputed income is an earned non-cash benefit, and is reported as income on year-end tax statements. Please see Questions 32 through 36 for more details. Before adding your domestic partner or his/her dependents to your group health insurance, you are encouraged to seek the advice of your tax professional to evaluate the specific impacts on your tax situation.

**47. Are there other enrollment opportunities to add my domestic partner and his/her eligible dependents after the initial enrollment period has expired?**

If you want to change from single to family coverage, or add dependents to your existing family coverage, you may be limited to coverage under the Standard Plan until you are able to select a different plan during a subsequent “It’s Your Choice” enrollment period. A 180-day waiting period for coverage of pre-existing medical conditions (except pregnancy) will apply to newly added domestic partner and dependents. The waiting period for pre-existing conditions will not apply to you (the subscriber) or children born or adopted after the effective date of coverage change.

In addition, there are the following opportunities for coverage to change from single to family without restrictions when you file an application within 30 days of the event, or within 60 days of the birth or adoption:

- Marriage
- Establishment of a domestic partnership by receipt of an Affidavit for Domestic Partnership at ETF. Note that Wisconsin law requires that a new spouse or domestic partner cannot be insured by you until 6 months have elapsed since your divorce or the termination of your prior domestic partnership. See Question 55 for more information.
- You or any eligible dependents involuntarily lose other medical coverage or lose the employer contribution for the other coverage
- Legal guardianship of a child is granted
- Birth, adoption of a child or placement for adoption
- Single parent declaring paternity

- An unmarried parent whose only eligible child resumes full-time student status or becomes disabled
- Upon order of a Federal Court under a National Medical Support Notice

**New!**

Added  
10/9/09

**48. What if both my domestic partner and I are both State of Wisconsin employees or are both WRS annuitants?**

If you and your domestic partner are each eligible state or university employees or annuitants:

- **You may each retain or select single coverage with your current plan(s); OR**
- **One of you may retain or select family coverage under one of your current plans, which will cover your domestic partner and any eligible dependents.**

If the domestic partners are each enrolled for single coverage, one of the single contracts may be changed to a family plan at any time without restriction and the other single contract will be cancelled. Family coverage will be effective on the beginning of the month following receipt of a *Health Insurance Application/Change* form or a later date specified on the application.

One family policy can be split into two single plans with the same carrier effective on the beginning of the month following receipt of a *Health Insurance Application/Change* form or a later date specified on the application from both domestic partners. However, if both have single coverage, no dependents are covered and if one of you should die, that individual's sick leave credits will not be available for use by the surviving domestic partner. Under a family plan, sick leave credits are preserved for the surviving domestic partner regardless of who should die first.

The named subscriber for the family coverage can be changed to the other domestic partner at any time. Coverage will be effective on the beginning of the month following receipt of a *Health Insurance Application/Change* form or a later date specified on the application.

If at the time of establishment of the domestic partnership by receipt of the Affidavit of Domestic Partnership at ETF, the employees and/or annuitants each have family coverage or one has family coverage and the other has single coverage, **coverage must be changed to one of the options listed above within 30 days of effective date of the domestic partnership.** Failure to comply with this requirement may result in denial of claims for eligible dependents. **Note:** A change from single to family coverage due to domestic partnership is effective the date the Affidavit of Domestic Partnership is received by ETF. However, state law requires that if you or your partner divorced or terminated a Chapter 40 domestic partnership within 6 months or less of the date you filed your new Affidavit of Domestic Partnership, the health insurance coverage for your new spouse or domestic partner cannot begin until the 6 month break has elapsed since you covered your previous spouse or domestic partner.

**49. If I die, can my domestic partner keep his/her coverage under my health insurance?**

Yes, if your domestic partner is covered on your policy, he/she may continue that health insurance after your death. However, he/she may not add any new dependents to this policy except for children who are in the process of being adopted by you or who are conceived but not yet born at the time you die, or the dependent was previously insured on your policy and regained eligibility.

**50. Does my domestic partner have the same rights as another surviving insured dependent to use my accumulated sick leave credits to pay health insurance premiums in retirement?**

Yes. Domestic partners qualify as surviving insured dependents and may elect to delay use (escrow) or initiate use (un-escrow) of sick leave credits annually. In order to escrow, the subscriber must certify that he/she has health coverage comparable to the State of Wisconsin's Standard Plan. The subscriber may escrow only once during a calendar year. He/she may un-escrow during the fall insurance enrollment period for coverage effective January 1 of the following year or the first of any month in the following year. If the subscriber loses eligibility for his/her comparable coverage (not voluntary cancellation), or the contribution for it (if it is an employer sponsored plan) he/she may un-escrow (re-enroll) by filing an application within **30 days** of the loss. Please contact ETF at 1-877-533-5020 for more information. There may be imputed income associated with use of accumulated sick leave credits for a non-tax dependent domestic partner. Please see question 32 for more information.

**51. How do I terminate health insurance if my domestic partnership ends?**

As soon as possible, you should submit an *Affidavit of Termination of Domestic Partnership* form (ET-2371) and a health insurance application/change form to terminate coverage of your domestic partner and his/her dependents. Employees should submit the notarized Affidavit to ETF *and* a copy of the Affidavit and a health insurance application/change form to their benefits/payroll/personnel office. Annuitants should submit all forms to ETF.

**52. If I terminate my domestic partnership, when does the health insurance coverage end for my domestic partner and his/her insured dependents?**

The coverage will end at the end of the month following receipt of the *Affidavit of Termination of Domestic Partnership* by ETF. The health insurance application/change

form that documents the removal of the dependent(s) should be submitted at the same time. Employees should submit the notarized Affidavit to ETF *and* a copy of the Affidavit and a health insurance application/change form to their benefits/payroll/personnel office. Annuitants should submit all forms to ETF.

**53. When can I change from family to single coverage without restrictions?**

- You may switch from family to single coverage at any time. However, such a change is deemed to be a voluntary cancellation of coverage for all covered dependents. Voluntary cancellation is not considered a “qualifying event” for continuation coverage.
- If your domestic partnership terminates, you may change from family coverage to single coverage with the change being effective on the first day of the month on or following receipt of the *Affidavit of Termination of Domestic Partnership* by ETF. An employee’s health insurance application/change form should be submitted to your benefits/payroll/personnel office with a copy of the Affidavit. An annuitant’s health insurance application/change form should be submitted to ETF with the Affidavit.

Note that if you have single coverage at the time of your death, your unused sick leave credits will not be available for use by any surviving domestic partner or any surviving dependents.

**54. Is COBRA/continuation offered to my domestic partner and his/her dependent(s) after termination of the domestic partnership?**

After termination of a domestic partnership, your former domestic partner and his/her eligible dependents may be eligible to continue health insurance coverage under our program. See information on COBRA/continuation in the “It’s Your Choice: Reference Guide” under the State and Federal Notifications section, and the Frequently Asked Questions section.

**55. If I have recently terminated a marriage or domestic partnership, when am I permitted to enroll a new domestic partner or a new spouse?**

You must wait at least six months from the date of a divorce or date of the termination of the preceding domestic partnership before you can enroll a new domestic partner or a new spouse for health insurance coverage.

## **LIFE INSURANCE**

### **56. How do I enroll my domestic partner in the Life Insurance program?**

Employees may enroll their domestic partner and his/her partner's children for Spouse and Dependent Coverage under the Wisconsin Public Employers Group Life Insurance program when the employee is first eligible for coverage.

There is also an enrollment opportunity within 30 days of the date that an employee first has a spouse/domestic partner and/or dependent eligible for insurance. A completed *Affidavit of Domestic Partnership* (ET-2371) must be filed with ETF and a *Life Insurance Application* (ET-2304) for spouse and dependent coverage must be submitted within 30 days of the date that the Affidavit was filed. If an application is not submitted within 30 days, coverage for a domestic partner and other eligible dependents can only be obtained by submitting an *Evidence of Insurability Application* (ET-2305). Note: The addition of a domestic partner does not provide an open enrollment opportunity if the employee already has a dependent child who was not insured when the employee was first eligible.

Coverage will be effective on the first day of the calendar month that begins on or after the date the *Life Insurance application* (ET-2304) is received by the employer, provided an *Affidavit of Domestic Partnership* (ET-2371) is on file at ETF. If a properly completed life insurance application and *Affidavit of Domestic Partnership* (ET-2371) are filed prior to January 1, coverage will be effective on January 1, 2010.

If an employee already has Spouse and Dependent coverage, no additional application is necessary; however, an Affidavit must be on file at ETF before coverage for domestic partners and their children is effective.

See the *Wisconsin Public Employers (WPE) Group Life Insurance Brochure* (ET-2101) for more information about eligible dependents, enrollment, coverage amounts and termination.

### **57. Can I name my domestic partner as my life insurance beneficiary?**

Yes, there are no restrictions on who you name as your beneficiary of your life insurance benefits. ETF will pay your life insurance proceeds according to the most recent beneficiary designation form received prior to your death, regardless of any changes in your personal situation.

If you have never filed a beneficiary designation form, your death benefits will be paid according to the statutory standard sequence. If you have filed an *Affidavit of Domestic*

*Partnership* form (ET-2371) with ETF, and the domestic partnership has not terminated prior to your death, your domestic partner is your primary beneficiary under standard sequence.

## **OPTIONAL INSURANCE PLANS**

### **58. How do I enroll my domestic partner for coverage with an optional insurance plan during an open enrollment period?**

Currently Employed – if you are enrolling in a plan with your domestic partner or you wish to add a domestic partner during an open enrollment period, you must first establish a domestic partnership effective date by either:

- Filling out and returning a notarized ETF *Affidavit of Domestic Partnership* (ET-2371) to ETF to establish a domestic partnership effective date. You will need to submit a copy of the Affidavit to your employer and complete an application for each plan you wish to enroll in during the open enrollment period, or
- You will need to contact your payroll/benefits/personnel office for the necessary paperwork to establish a domestic partnership effective date prior to submitting your application if you are not using the ETF Affidavit.

Retired – if you are enrolling in a plan with your domestic partner or you wish to add a domestic partner you must first establish a domestic partnership effective date. You will need to fill out and return a notarized ETF *Affidavit of Domestic Partnership* (ET-2371) to ETF to establish a domestic partnership effective date. Once you have an effective date, complete and return an application to each plan you wish to enroll in during the open enrollment period.

### **59. Does the creation of a domestic partnership provide a special enrollment opportunity for the optional insurance plan?**

Currently Employed – if you are currently enrolled in a plan and wish to add a domestic partner outside an open enrollment period, you must first establish a domestic partnership effective date by either:

- Completing a notarized ETF *Affidavit of Domestic Partnership* (ET-2371) and sending it to ETF to establish an effective date to provide your payroll and benefits representative along with the completed application. Your application must be sent within 30 days of the effective date for each plan you wish to add your domestic partner, or

- You will need to contact your payroll/benefits/personnel office for the necessary paperwork to establish a domestic partnership effective date prior to submitting your application if you are not using the ETF Affidavit.

Retired - You will need to fill out and return a notarized ETF *Affidavit of Domestic Partnership* (ET-2371) to ETF to establish a domestic partnership effective date. Once you have an effective date you will need to submit documentation of the effective date along with the completed application within 30 days of the effective date to each plan you wish to enroll in.

### **EMPLOYEE REIMBURSEMENT ACCOUNT PROGRAM**

#### **60. Can I use the Employee Reimbursement Account program to pay the qualifying medical expenses of my domestic partner or his/her dependents?**

No, federal tax regulations do not allow the use of flexible benefit plans to pay for a domestic partner's (or domestic partner's child's) qualifying medical expenses on a pre-tax basis unless the domestic partner or child qualifies under the Internal Revenue Code as a tax dependent at the time the expense was incurred.

#### **61. How can I determine if my domestic partner qualifies under the Internal Revenue Code as my tax dependent?**

Consult the guidelines in IRS Publication 501 for "qualifying relative." In general, the IRS requires that a qualifying relative meet four tests:

- The dependent does not meet the "qualifying child" tests;
- The dependent must live with you all year as a member of your household;
- The dependent's gross income must be less than \$3,500 for the year;
- You must provide more than half of the dependent's support for the year.

The lists above should not be used as the sole determination of your dependent's tax status. These tests are described in detail in IRS Publication 501, which is available at the Internet Web site of the Internal Revenue Service.

#### **62. Can I use the Employee Reimbursement Account program to pay for the dependent care of my domestic partner's dependent child?**

No, federal tax regulations do not allow the use of flexible benefit plans to pay for dependent care of a domestic partner's child on a pre-tax basis unless the child qualifies under the Internal Revenue Code as the employee's tax dependent at the time the care expense was incurred.

### **DUTY DISABILITY PROGRAM (PROTECTIVE CATEGORY ONLY)**

#### **63. If I die, can my domestic partner receive survivor benefits from Duty Disability?**

Duty Disability survivor benefits may be payable to your domestic partner if you die as a result of the injury or disease for which a benefit is paid or payable (if not already receiving duty disability benefits). The domestic partner has to be the same person you were in a domestic partnership with on the date you qualify for Duty Disability (qualifying date). There must be an *Affidavit of Domestic Partnership* (ET-2371) on file with the Department of Employee Trust Funds on or before your qualifying date. Your surviving domestic partner would be eligible to receive survivor benefits until he/she enters into a new domestic partnership or marriage. There is no way to anticipate becoming eligible for Duty Disability benefits, so it is extremely important to have an *Affidavit of Domestic Partnership* (ET-2371) on file with ETF to protect potential Duty Disability survivor benefits for your domestic partner.

#### **64. If I die, can my domestic partner's dependents receive survivor benefits from my Duty Disability?**

No, duty disability survivor benefits are not payable to surviving dependents of your domestic partner.

### **WISCONSIN DEFERRED COMPENSATION (WDC) PROGRAM**

#### **65. What actions must I take to notify the WDC program if I am in a domestic partnership?**

If you have not already done so, file an *Affidavit of Domestic Partnership* form (ET-2371) with ETF. The WDC will confirm the existence of your domestic partnership with ETF prior to making any changes on your WDC account.

#### **66. May I name my domestic partner as my WDC beneficiary?**

Yes, you may name any person as your beneficiary, including your domestic partner. We recommend that you complete a WDC Beneficiary Designation form, naming your domestic partner and submit it to the WDC, if you intend that your domestic partner be your WDC beneficiary. This will ensure that your intentions are made clear. Note that the WDC Beneficiary Designation is a separate and distinct form from the WRS beneficiary designation form that is returned to ETF for WRS benefits. The WDC Beneficiary Designation form is available on the Wisconsin Deferred Compensation Program Web Site, <https://wisconsin.gwrs.com/> under the "Forms and Brochures" tab.

**67. What if I die before I have named anyone as my beneficiary, including my surviving domestic partner?**

As is done for WRS benefits when a participant dies without a beneficiary designation on file, the WDC uses the State of Wisconsin's "standard sequence" to determine beneficiaries. Standard sequence has several classes of individuals, starting with surviving spouses. The new law provides that surviving domestic partners are in the same class as spouses. Therefore, your surviving domestic partner would become your beneficiary under the standard sequence rules. However, WDC encourages all participants to complete and submit a WDC beneficiary designation form in advance to avoid any issues that could delay distribution of your account.

**68. Can my domestic partner roll over any deferred compensation balance to another tax-deferred account, such as a s. 403(b) plan or an IRA?**

Yes. A domestic partner is permitted to roll over an inherited WDC account to another qualified plan or an IRA on a tax-free basis. However, the amount must be rolled over directly to the new plan or IRA.

**69. What actions I need to take to notify the WDC program if my domestic partnership ends?**

If you have not already done so, send an *Affidavit of Termination of Domestic Partnership* form (ET-2372) to ETF as soon as possible. The WDC will confirm the termination of your domestic partnership with ETF prior to making any changes on your WDC account.

**70. The court has ordered me to divide my WDC account with my former domestic partner. What should I do?**

If your domestic partnership ends, Chapter 40 permits the division of WDC accounts and annuities between WDC participants and former domestic partners. However, because federal law does not grant former domestic partners the same status as former spouses, under the Internal Revenue Code there are restrictions on when alternate payees who are former domestic partners can receive a benefit from their former partners' WRS accounts. There may also be significant tax consequences when these alternate payees actually receive a benefit. More information about the restrictions and tax consequences associated with domestic partner domestic relations orders will be provided upon request.

**71. Who can help me if I have additional questions on domestic partnerships and the WDC program?**

For WDC-related questions, call WDC toll free at 1-877-457-9327. For WDC-related questions, call WDC toll free at 1-877-457-9327, option 0. They are available from 7 am to 7 pm, Monday through Friday.