

2023

Domestic Partner Benefits

Presented by Benefit Comply

Assurex Global Partners

- Bolton & Company
- Cottingham & Butler
- Cragin & Pike, Inc.
- Daniel & Henry
- Dean & Draper Insurance Agency
- The Graham Company
- Henderson Brothers, Inc.
- The Horton Group
- Houchens Insurance Group
- The IMA Financial Group
- INSURICA
- Kapnick Insurance Group
- Lyons Companies
- The Mahoney Group
- MJ Insurance
- Oswald Companies
- Parker, Smith & Feek, Inc.
- R&R Insurance
- RCM&D
- The Rowley Agency
- Starkweather & Shepley
- Sterling Seacrest Pritchard
- WA Group
- Watkins Insurance Group
- Woodruff Sawyer
- York International

Agenda

- Definitions
- Eligibility Rules
- Taxation
- Other Compliance Considerations

Definitions

Domestic Partners

- “Domestic partner” refers specifically to unmarried partners of any sex. It does not include same-sex spouses

Same-sex spouses

- Same-sex spouses should be treated the same as opposite-sex spouses

Common law spouses

- A few states still recognize common law marriages
- A common law spouse is not a domestic partner – they are the employee’s legal spouse and should be treated the same as any other spouse
- No official documentation like a marriage license – typically have to rely on employee’s representation of common law marriage

Coverage for Domestic Partners

Do employers have to offer coverage to domestic partners?

Federal Requirements

Coverage NOT required by federal law

State Requirements

Some states require coverage be offered to registered domestic partners

- Required for fully-insured plans
- Self-funded plans generally qualify for ERISA pre-emption
- Only a handful of states require coverage at the state level, while many states have requirements at the city/county level

While employers may not be required to offer coverage to domestic partners, more are choosing to do so to keep up with current trends, to avoid discrimination claims, and to remain competitive

ELIGIBILITY RULES

Eligibility Rules

- Plan Definition

Fully-Insured

- Fully-insured plans should follow the state's (or carrier's) definition, if applicable
 - Apply state definition of the state in which the policy is issued, except for CA residents
 - CA law requires fully-insured plans issued in any state to provide coverage to domestic partners registered in CA
 - If no state or carrier definition, employer can set their own eligibility

Self-Funded

- Self-funded plans may defer to a state's definition or set their own eligibility

Eligibility Rules

Common Eligibility Requirements

- ✓ Age requirement (e.g., 18+)
- ✓ Currently living and have lived at the same address for XX months/years
- ✓ Joint checking or shared ownership or expenses
- ✓ Not in another marriage or domestic partnership
- ✓ Formal registration with the state
- ✗ Do NOT limit eligibility based on sex of the parties – will likely lead to sex discrimination claims

Eligibility Rules

- Common Practices for Attestation/Certification
 - No additional documentation or attestation
 - Require a state certification or registration (helps determine state taxation)
 - Set forth eligibility requirements and employee attests to meeting such requirements
 - Require proof of shared living and expenses
 - Combination of above
- For a fully-insured plan, the carrier may have specific requirements for attestation/certification

SAMPLE

Affidavit of Domestic Partner Eligibility for XYZ Company Group Health Plan

I hereby certify and declare, under penalty of perjury, that the statements below are true and correct.

_____ is my domestic partner in accordance with each and every one of the following criteria:

1. My domestic partner and I are both at least 18 years of age and mentally competent to consent to contract.
2. My domestic partner and I share a close and committed personal relationship and are not related to one another in a way that would prohibit marriage in our state of residence.
3. My domestic partner and I are each other's sole domestic partners and are not married to anyone else.
4. My domestic partner and I share the same regular, permanent residence and are jointly responsible for each other's common welfare and shared financial obligations.
5. Upon request by XYZ Company, I agree to provide evidence of common residence with my domestic partner (such as a driver's license or similar document).

Signature of Employee

Type or Print Name of Employee Date

TAXATION

Taxation

***Coverage may be provided
on a tax-favored basis***

- **Legally Married Spouse**

Includes common law marriage

- **Children**

Includes biological and adopted children, stepchildren, foster children and, in some cases, legal guardians

***Generally taxable at federal
level (unless individual is a
qualifying relative or child)***

State taxation varies

- **Domestic Partners**

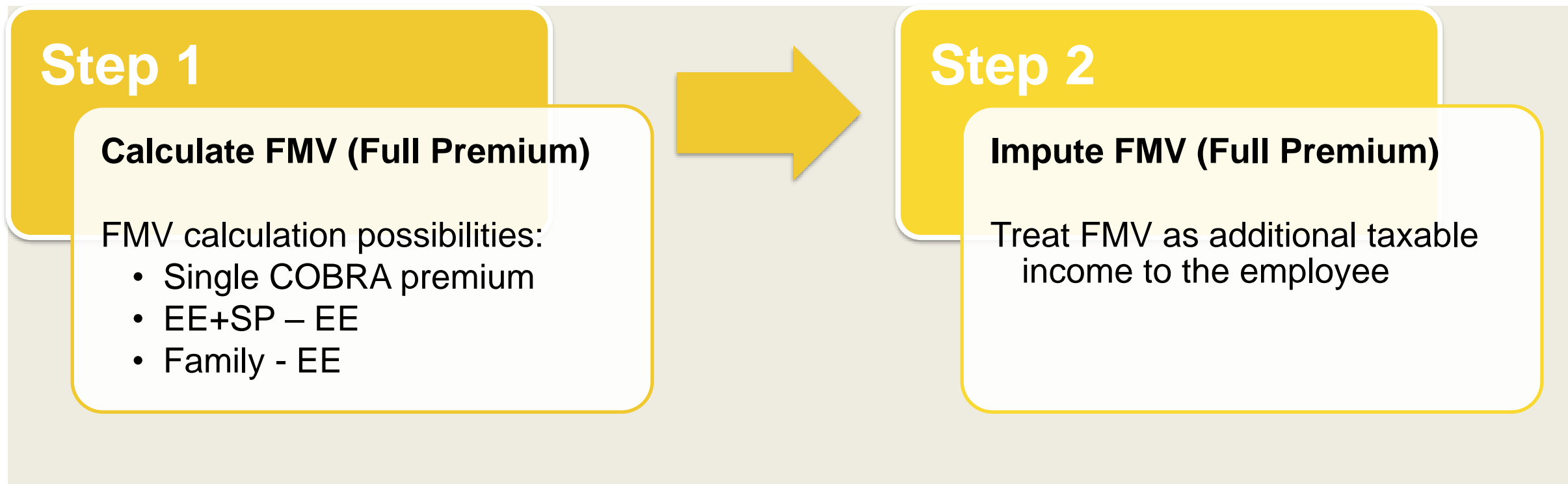
- **Civil Union Partners**

- **Children of the above**

In some states, registered domestic partners will be considered a stepparent (e.g., CA, OR, WA)

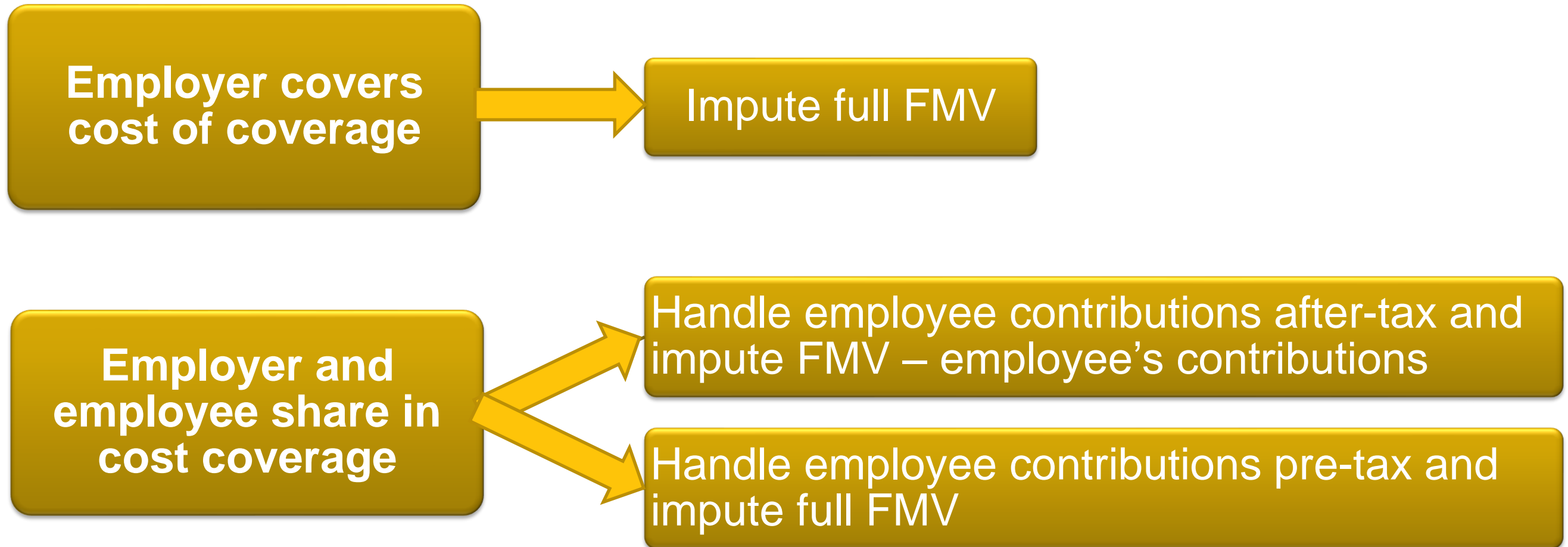
Taxation

- Imputing Tax
 - Must tax employee on fair market value (FMV) of the coverage for domestic partner or domestic partner's children who are not employee's tax dependents



Taxation

The mechanics of imputing taxable income depend on how the coverage is paid for by the employer and the employee



Taxation

Two Options for Timing of Imputing Income

Option 1: Year End

- Entire year's worth of FMV added as taxable income on employee's W-2
- Simpler, but results in a tax "surprise" for employee and employer at year end

Option 2: Payroll-by-Payroll

- Add FMV to payroll as taxable income each pay period and withhold taxes accordingly
- Allows payroll taxes to be collected throughout the year and automatically included in W-2

Taxation

Example

	Monthly Premium	Employer Contribution	Employee Contribution
EE	\$450	\$450	\$0
EE + SP	\$800	\$600	\$200
EE + Children	\$750	\$550	\$200
Family	\$1,000	\$750	\$250

	FMV Possibilities
Domestic partner only	\$450/month (EE only) or \$350/month (EE+SP – EE)
Domestic partner and domestic partner's children	\$450/month x # enrolled or \$550/month (Family – EE) or \$650/month = (EE+SP - EE) + (EE+Children - EE)
Domestic partner's children only	\$450/month (EE only) or \$300/month (EE+Children – EE)

What about if the employee's children and the domestic partner's children enroll?

Taxation

Example

	Monthly Premium	Employer Contribution	Employee Contribution
EE	\$450	\$450	\$0
EE + SP	\$800	\$600	\$200
EE + Children	\$750	\$550	\$200
Family	\$1,000	\$750	\$250

- Imputing Income Options
 - Domestic partner only (\$350/month, EE+SP - EE)
 - Employee contributes \$200 pre-tax → Impute \$350 as additional taxable income
 - Employee contributes \$200 after-tax → Impute \$150 as additional taxable income
 - Domestic partner + children (\$550/month, Family – EE)
 - Employee contributes \$250 pre-tax → Impute \$550 as additional taxable income
 - Employee contributes \$250 after-tax → Impute \$300 as additional taxable income

OTHER COMPLIANCE CONSIDERATIONS

Cafeteria Plans

- Election Change Rules May Not Apply
 - If coverage is provided on a taxable basis, there is more flexibility to allow mid-year election changes
 - Employer may choose to restrict mid-year election changes, for example, only XX changes permitted per year, or restrictions similar to §125 election change rules
 - Consider what type of documentation may be required for mid-year changes
 - Carrier may still only permit mid-year enrollment upon a HIPAA special enrollment right

FSAs & HRAs

- Health FSA & HRA Reimbursement
 - Funds may only be used to reimburse qualifying medical expenses of employee, employee's spouse, the employee's child who has not yet reached age 27, and employee's tax dependents
 - Expenses of domestic partners are generally not reimbursable on a tax-favored basis
 - IRS Priv. Ltr. Rul. 201415011 indicates an HRA may reimburse qualifying medical expenses for domestic partners, but only if the reimbursement is imputed as taxable income to the employee (if the domestic partner is NOT the employee's tax dependent)
- DCAP Reimbursement
 - Qualifying child might include daycare expenses for domestic partners' children if the employee is also a parent or stepparent
 - Normally day care expense must be incurred to allow employee and spouse to work – but domestic partner is not a spouse so their employment status is irrelevant

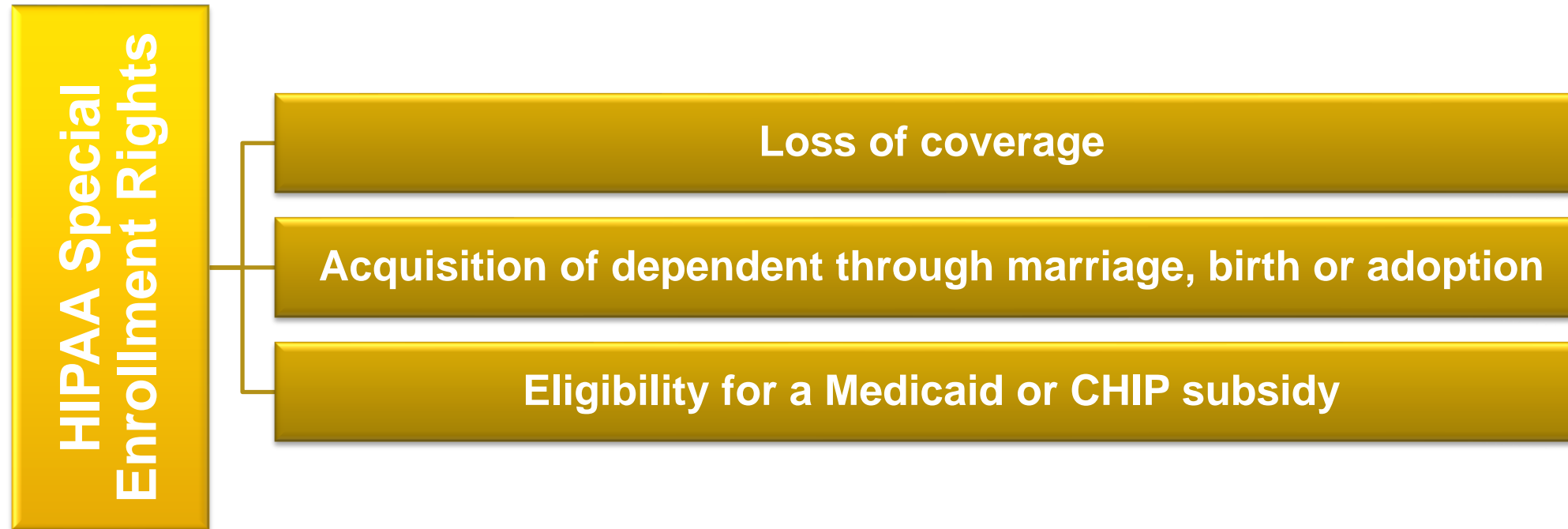
HSAs

- Reimbursement from Employee's HSA
 - Funds may only be used to reimburse qualifying medical expenses of HSA account holder and account holder's spouse and tax dependents
 - Expenses of domestic partners are generally not reimbursable on a tax-favored basis
- Domestic Partner Enrolled in family HDHP
 - Domestic partner could open and contribute to an HSA (assuming there isn't any other disqualifying coverage)
 - Domestic partner could contribute up to the family maximum (no limit like the one that applies to married spouses)

Life Insurance

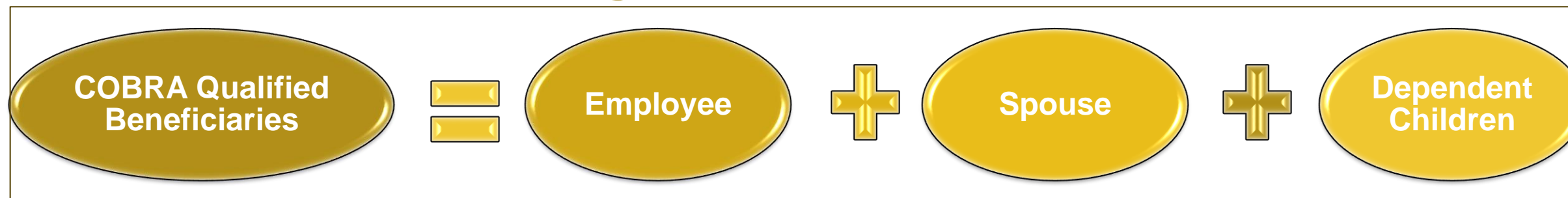
- Life Insurance for Domestic Partner
 - Could enroll in dependent life insurance on a post-tax basis if plan eligibility rules permit
- Life Insurance Beneficiary
 - Could be listed as the employee's beneficiary
 - Important that employee lists domestic partner as beneficiary if they want them to receive the benefits because a domestic partner is unlikely to be the default beneficiary under either the plan rules or state law if no beneficiary is listed

HIPAA Special Enrollment Rights



- Newly forming a domestic partnership does NOT trigger a special enrollment
 - Not required, but some plans allow enrollment upon a newly formed domestic partnership
- If domestic partner loses eligibility for other coverage, or becomes eligible for a Medicaid or CHIP subsidy, that triggers a HIPAA special enrollment right

COBRA Continuation Rights



- Limited COBRA Rights for Domestic Partners
 - No independent federal COBRA rights
 - Offered COBRA with employee (e.g., following a termination of employment or reduction in hours), but may only continue coverage if employee remains enrolled
 - Some plans choose to offer COBRA-like continuation to domestic partners even though it is not required
 - Fully-insured plans may be required to offer state continuation coverage to domestic partners in some cases (e.g., under CalCOBRA)
- Regular COBRA Rights for Domestic Partners' Children
 - If they are eligible for coverage, they would have independent COBRA rights
 - “Dependent child” for COBRA purposes means a dependent under the plan, which would include the domestic partner’s children (not necessarily tax dependent)

COBRA Continuation Rights

Termination of employment or reduction in hours

- Domestic partner may continue COBRA along with the employee (former employee)
- Dependent children have independent COBRA continuation rights

Death of employee or dissolution of domestic partnership

- No COBRA continuation rights for the domestic partner
- Dependent children have independent COBRA continuation rights

Loss of dependent child status

- Dependent children have independent COBRA continuation rights

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