

SAME-SEX DOMESTIC PARTNER BENEFITS

Montgomery County Public Schools (MCPS) offers same-sex domestic partners and their dependents the opportunity to enroll in the Employee Benefit Plan. Benefits provided to an employee's same-sex domestic partner or the partner's eligible dependents are equivalent to those available for an employee's spouse or spouse's eligible dependents. This coverage is available to qualified same-sex domestic partners of both covered active and retired plan participants.

WHAT ARE THE REQUIREMENTS FOR SAME-SEX DOMESTIC PARTNERSHIP?

To establish a same-sex domestic partnership, you and your partner must satisfy all of the following requirements:

- be the same sex;
- share a close personal relationship and be responsible for each other's welfare;
- have shared the same legal residence for at least 12 months;
- be at least 18 years old;
- have voluntarily consented to the relationship, without fraud or duress;
- not be married to, or in a domestic partnership with, any other person;
- not be related by blood or affinity in a way that would disqualify them from marriage under State law if the employee and partner were opposite sexes;
- be legally competent to contract; and
- share sufficient financial and legal obligations (described below in the section on *Required Evidence*).

WHAT EVIDENCE IS REQUIRED FOR SAME-SEX DOMESTIC PARTNERSHIP?

You must provide the following:

1) the attached *Affidavit For Same-Sex Domestic Partnership* signed in the presence of a notary public by both the employee and the employee's partner under penalty of perjury declaring that they satisfy the requirements of domestic partnership
and;

2) evidence that you and your partner share items described in at least 2 of the following:

- a joint housing lease, mortgage, or deed;
- joint ownership of a motor vehicle;
- a joint checking or savings account;
- designation of the partner as a primary beneficiary of the employee's life insurance, retirement benefits, or residuary estate under a will; or
- designation of the partner as holding a durable power of attorney for health care decisions regarding the employee.

UNDER WHICH GROUP INSURANCE PLANS MAY I ENROLL MY SAME-SEX DOMESTIC PARTNER AND MY PARTNER'S ELIGIBLE DEPENDENTS?

You may enroll your same-sex domestic partner and your partner's eligible dependents in your medical plan, your dental plan, your vision plan and your prescription plan. Due to limitations on the current life insurance policy, dependent life insurance cannot be extended to a domestic partner or a partner's dependents. **Please note that, under current tax law, reimbursements cannot be made from your Health Care Flexible Spending Account of expenses incurred by your same-sex domestic partner or your partner's eligible dependents, if they are not your legal tax dependents. The same is true for the Dependent Care Flexible Spending Account (in addition to other qualifying requirements that apply).**

WHO QUALIFIES AS AN "ELIGIBLE DEPENDENT" OF MY SAME-SEX DOMESTIC PARTNER FOR GROUP INSURANCE PURPOSES?

The following dependents of your same-sex domestic partner are eligible dependents for group insurance purposes:

- the unmarried children of your same-sex domestic partner, residing with you, under 19 years of age or up to September 30th following the dependent's 23rd birthday.
- the unmarried child of your same-sex domestic partner, residing with you, beyond age 19 who is incapable of self-support because of a mental or physical disability, and who depends on the same-sex domestic partner for support. The disability and enrollment in the plan must have occurred prior to age 19.

The term "children" includes any natural children and any legally adopted children.

HOW DO I ENROLL MY SAME-SEX DOMESTIC PARTNER AND MY PARTNER'S ELIGIBLE DEPENDENTS IN MY GROUP INSURANCE PLANS?

To enroll your same-sex domestic partner and your partner's eligible dependents:

- submit a notarized *Affidavit For Same-Sex Domestic Partnership*, with all required supporting evidence to the Employee and Retiree Service Center (ERSC) (*affidavit form is attached*);
- within 60 days of submitting the affidavit with all required supporting evidence,
 - complete a benefit enrollment form 455-20, if you are changing your level of coverage due to the addition of your same-sex domestic partner and your partner's eligible dependents (*please note that proof of eligibility, such as a birth certificate, is required to add your partner's eligible dependents to your group insurance plans*); and
 - complete any forms required by your group insurance plan to add a dependent.

All forms must be received by the ERSC within 60 days of filing a same-sex domestic partnership affidavit with all required supporting evidence; if not, you will have to wait until the next open enrollment period to add your same-sex domestic partner and your partner's eligible dependents, to be effective the next plan year.

HOW DOES THE ADDITION OF MY SAME-SEX DOMESTIC PARTNER AND MY PARTNER'S ELIGIBLE DEPENDENTS TO MY EMPLOYEE BENEFIT PLAN AFFECT MY TAX SITUATION?

Internal Revenue Service regulations require different tax treatment for group insurance costs associated with same-sex domestic partner coverage in cases where the partner does not qualify as a tax dependent under the IRS Code (in determining the tax effect of domestic partner coverage, MCPS will assume that neither your same-sex domestic partner or your partner's eligible dependents qualify as tax dependents, unless you are able to provide documentation to the contrary).

For active employees who pay their portion of the group insurance costs with pre-tax payroll deductions, the addition of a same-sex domestic partner and the partner's eligible dependents to those group insurance plans will have the following effects:

Payroll Deduction

For each group insurance plan to which you add your same-sex domestic partner and your partner's eligible dependents:

- you will pay the difference between your cost for single coverage and your cost for the coverage level that includes the addition of your same-sex domestic partner and your partner's eligible dependents, with after-tax deductions; if you are already above the single coverage level because you cover a tax-qualified dependent, then the portion of that difference described above, to be paid with after-tax deductions will be adjusted to reflect the proportion that your same-sex domestic partner and your partner's eligible dependents bear to the total number of dependents you cover;
- the amount remaining between your total cost (which includes the addition of your same-sex domestic partner and your partner's eligible dependents) and what is paid with after-tax deductions (as determined above), will be paid with pre-tax deductions.

Examples

1

- you currently have single coverage, the cost of which = \$20;
- after adding your same-sex domestic partner and your partner's two children, your coverage level increases to family and your cost = \$50;
- the difference between your cost for single coverage and your cost for family coverage = \$50 - \$20 or \$30;
- the after-tax portion of your total deduction of \$50 for family coverage = \$30;
- the pre-tax portion of your total deduction of \$50 for family coverage = \$50 - \$30 or \$20.

2

- you currently have family coverage, that includes your two children, the cost of which = \$50;
- your cost, if you had single coverage = \$20;
- after adding your same-sex domestic partner and your partner's two children, your coverage level remains as family and your cost remains = \$50;
- the difference between your cost for single coverage and your cost for family coverage = \$50 - \$20 or \$30;
- the proportion of dependents covered via the domestic partnership to the total dependents you cover, including those covered via the domestic partnership = $\frac{3}{5}$ or 60%;
- the after-tax portion of your total deduction of \$50 for family coverage = $60\% \times \$30$ or \$18;
- the pre-tax portion of your total deduction of \$50 for family coverage = \$50 - \$18 or \$32.

Imputed Income

If you cover dependents that do not qualify as tax dependents under the IRS Code, the value of MCPS's contribution toward that coverage is considered wages, subject to tax withholding. This is known as *imputed income*. The way that imputed income is determined is very similar to the way that your after-tax deduction is determined, except that the amount MCPS pays is substituted for the amount *you* pay.

Examples

1

- you currently have single coverage, for which MCPS pays = \$80;
- after adding your same-sex domestic partner and your partner's two children, your coverage level increases to family and MCPS now pays = \$200;
- the difference between MCPS' cost for single coverage and MCPS' cost for family coverage = \$200 - \$80 or \$120;
- you will have reportable imputed income = \$120, subject to tax withholding from your paycheck.

2

- you currently have family coverage, that includes your two children, for which MCPS pays = \$200;
- if you had single coverage, MCPS would pay = \$80;
- after adding your same-sex domestic partner and your partner's two children, your coverage level remains as family and MCPS' cost remains = \$200;
- the difference between MCPS' cost for single coverage and MCPS' cost for family coverage = \$200 - \$80 or \$120;
- the proportion of dependents covered via the domestic partnership to the total dependents you will cover, including those covered via the domestic partnership = 3/5 or 60%;
- you will have reportable imputed income = \$120 x 60% or \$72, subject to tax withholding from your paycheck.

For active and retired employees who pay their portion of the group insurance costs with after-tax deductions from their paycheck or retirement check, or through direct bill, the addition of a same-sex domestic partner and the partner's eligible dependents to those group insurance plans will have only the imputed income effect described above.

WHAT IF MY SAME-SEX DOMESTIC PARTNERSHIP ENDS?

Should your relationship with your same-sex domestic partner end, or you no longer meet the domestic partnership requirements, the same-sex domestic partner and the partner's eligible dependents are no longer eligible for coverage under MCPS' Employee Benefit plans. You must notify the ERSC within 30 days of the termination event by completing MCPS Form 455-20 to remove the ineligible dependents. In such case, benefits will terminate or continue for the same-sex domestic partner and the partner's eligible dependents as they would for a former spouse under similar circumstances (such as a divorce). For example, the same-sex domestic partner and the partner's eligible dependents may be able to continue their health coverage under COBRA.

PLEASE NOTE:

The information presented in this material has been prepared to assist you in understanding the provisions of domestic partner benefits. While this material attempts to summarize the provisions of domestic partner benefits and answer questions you may have, it is by no means exhaustive or exclusive. NO GUARANTEE OR CONTRACT IS CREATED BY THIS MATERIAL. In the event that this material conflicts federal law or collective bargaining agreements in effect, the language of the federal law and the collective bargaining agreements will be the final authority.

For questions, please contact the ERSC at 301-517-8100 or via email at ERSC@mcpsmd.org.

CONFIDENTIAL

**MONTGOMERY COUNTY PUBLIC SCHOOLS
AFFIDAVIT FOR SAME-SEX DOMESTIC PARTNERSHIP**

(ALL REQUIRED EVIDENCE AND DOCUMENTATION MUST BE ATTACHED TO THIS FORM)

Part I

I, _____, Social Security # _____ Employee ID # _____
Employee - Print Name

and I, _____, Social Security # _____
Same-Sex Domestic Partner - Print Name

affirm, under penalty of perjury, that we satisfy **all** the following requirements as domestic partners:

- (A) be the same sex ;
- (B) share a close personal relationship and be responsible for each other's welfare;
- (C) have shared the same legal residence for at least 12 months;
- (D) be at least 18 years old;
- (E) have voluntarily consented to the relationship, without fraud or duress;
- (F) not be married to, or in a same-sex domestic partnership with, any other person;
- (G) not be related by blood or affinity in a way that would disqualify them from marriage under State law if the employee and partner were opposite sexes;
- (H) be legally competent to contract; and
- (I) share sufficient financial and legal obligations to satisfy at least two of the following items (**evidence required**):
 - 1. a joint housing lease, mortgage, or deed;
 - 2. joint ownership of a motor vehicle;
 - 3. a joint checking or savings account;
 - 4. designation of the partner as a primary beneficiary of the employee's life insurance, retirement benefits, or residuary estate under a will; or
 - 5. designation of the partner as holding a durable power of attorney for health care decisions regarding the employee.

Part II

Termination of domestic partnership.

(1) We understand that we must notify the ERSC (using MCPS Form 455-20) within 30 days after:

- (A) termination of the domestic partnership by death or dissolution; or
- (B) any other change in circumstances that disqualifies the relationship as a domestic partnership as defined under the Montgomery County Code, Section 33-22.

(2) We further understand that when the domestic partnership ends, benefits will terminate or continue in the same manner and to the same extent that MCPS terminates or continues, respectively, benefits for a former spouse in equivalent circumstances (such as dissolution of a partnership and divorce).

Part III

- (1) We understand this information will be held confidential and will be subject to disclosure only upon our express written authorization or if otherwise required by law.
- (2) We understand that declaration of domestic partnership and of responsibility for our common welfare may have legal and tax implications under federal and Maryland law. We understand that if an employee receives health benefits, including medical, dental, vision, and prescription, for a same-sex domestic partner, and if that same-sex domestic partner is not a dependent of the employee under the Internal Revenue Code, that employee will be required to pay taxes on the value of the benefit. We understand that we are encouraged to contact a tax advisor or an attorney regarding tax implications of same-sex domestic partner benefits.
- (3) I understand that enrollment in benefits to which I, or my dependents (including a same-sex domestic partner) are not entitled is considered fraud. I further understand that if I willfully misrepresent the eligibility of myself or my dependents (including a same-sex domestic partner), or fail to take the necessary action to remove ineligible dependents (including a same-sex domestic partner), or in any way obtain benefits to which I am not entitled, my benefits will be canceled, I may be required to repay any claims which have been paid inappropriately, and I may face charges or dismissal from MCPS service.

Employee's Signature

Date

Subscribed and sworn to before me this _____ day of, _____ 20__.

, Notary Public

My commission expires _____

Same- Sex Domestic Partner's Signature

Date

Subscribed and sworn to before me this _____ day of, _____ 20__.

, Notary Public

My commission expires _____