



## Domestic Partnerships

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The term "domestic partnership" refers to a non-marital legal arrangement in which two individuals are treated as one legal unit for certain purposes. It has become the generic term for a variety of forms of legal and institutional recognition of same-sex couples that fall short of same-sex marriage.

In several European countries and states such as California, Oregon, and Nevada, domestic partners, after registering their relationship with the state and affirming their enduring commitment to each other, are treated in a manner identical with or similar to the treatment of married opposite-sex couples. Most domestic partnerships, however, are not so expansive.

State-wide domestic partnerships differ from Civil Unions largely in that Civil Unions are typically seen as a separate institution but one parallel to marriage. Consequently, civil unions typically require ceremonies, while domestic partnerships do not. Nevertheless, the two forms are similar enough as to sometimes be used interchangeably, often with civil unions seen as a particular kind of domestic partnership.

### **Forms of Domestic Partnership in the United States**

In the United States, there are generally two kinds of domestic partnership.

The first is an arrangement that results in benefits, such as medical insurance, bereavement leave, joint housing, or family discounts, from one of the partners' employers or other entities such as academic institutions or commercial enterprises.

These arrangements are decided on individually by each company or other entity, and may require the individuals to register with a domestic partnership registry or sign an affidavit agreeing to joint financial responsibility and swearing to have lived together for up to a year prior to the domestic partnership agreement. These requirements are not imposed on married couples. Additionally, the financial value of any benefits granted by the company is subject to taxation, which is also not true for married couples.

A number of local and state governments offer at least some domestic partnership benefits to their employees, as does the federal government for civil service employees.

The second kind of domestic partnership in the United States is conferred by states or localities upon individuals. These registries grant a variety of privileges, often including the ability to visit a partner in the hospital if he or she is incapacitated, but usually fall far short of marriage. For instance, medical decision-making is often not granted, nor are the benefits applicable outside the jurisdiction where they are granted.

Some localities grant more expansive benefits, such as eliminating property transfer taxes or requiring local businesses to provide medical benefits for partners. This type of domestic partnership is usually granted by a town, city, or county, but some states have created state-wide domestic partnerships as well. These

include California, New Jersey, Oregon, Hawaii, Nevada, Colorado, Wisconsin, and Washington.

The California domestic partnership act, first passed in 2003 and implemented in 2005, has gradually been strengthened to include all the rights and responsibilities of marriage. The California Supreme Court in a 2005 case, *Koebke v. Bernardo Heights Country Club*, ruled that domestic partners must be treated as equivalent to heterosexual spouses in the provision of accommodations and other rights.

However, in the historic ruling of May 15, 2008, *In re Marriages*, the California Supreme Court, in striking down the state's ban on same-sex marriage, declared that domestic partnerships were not sufficient and ordered the state to permit same-sex couples to marry. Proposition 8, voted on in November 2008, restored the ban on same-sex marriage. In upholding Proposition 8, the California Supreme Court declared that domestic partnerships must be equal to marriage in every respect except the name.

### **Limitations**

No matter how expansive the domestic partnership offered, states can not grant immigration rights, the ability to collect social security benefits after the death of a partner, the ability to file jointly for federal taxes, and hundreds of other federal benefits routinely granted to opposite-sex married couples, such as property transfers free of federal taxes, certain procedures at federal court trials, veterans' pensions, and agricultural loans.

Additionally, domestic partnerships usually can not be transported to other states and dissolving them often involves lengthy residencies in the state where they were granted.

Indeed, many areas that grant domestic partnerships do not even have a procedure established for dissolving them. Without being able to dissolve a domestic partnership, individuals can be left unable to register a new partner for benefits. Moreover, if a domestic partnership becomes violent or coercive, the lack of easy escape options can also exacerbate the abuse.

Another problem with domestic partnerships is that the requirement for joint financial responsibility can leave a partner liable for the other partner's finances without an equitable distribution of joint finances or child custody.

In some instances, domestic partnership policies apply only to same-sex couples. However, some policies also apply to unmarried heterosexual couples, particularly to elderly ones who may wish to have certain benefits without getting into complicated tax situations. For instance, California's laws apply to all same-sex couples over the age of eighteen, but include heterosexual couples only if they are over 62.

### **History of Domestic Partnerships**

The first domestic partnership benefits in the United States were granted by the *Village Voice*, an independent local newspaper located in New York City, in 1982. West Hollywood and Berkeley, California were the first governmental units to offer domestic partnerships, both in 1985.

Since then, according to the Human Rights Campaign, organizations offering domestic partner benefits have ballooned. As of 2003, ten state and over 160 local governments offer domestic partnership plans. Over five thousand private companies, not-for-profit organizations, and unions offer them, including 198 of the Fortune 500. Additionally, 187 colleges and universities, including both elite and local institutions, offer the benefits.

Many companies, particularly large ones, have found that offering domestic partner benefits to their employees has been economically useful for them. The availability of these benefits can increase the desirability of the company to potential employees, increase productivity and retention for existing

employees, and make the company attractive to glbtq customers.

Some social organizations, professional societies, recreation facilities, and service providers (such as the American Automobile Association) have begun including domestic partners in the list of family members eligible for family discounts.

### **The Debate over Domestic Partnerships**

Despite the fact that many governments and private companies have extended domestic partnership benefits and/or created domestic partnership registries, the debate over these programs continues to rage.

Many companies are unwilling to enact domestic partnerships because they fear being boycotted by conservative consumers in response, or because they believe that individuals will register partnerships that do not exist in order to gain access to the benefits. However, even companies that have been threatened with a boycott in response to their domestic partner policies (such as Disney, for example) have found no adverse economic impact after enacting them. Additionally, the stringent requirements for proof of a relationship and the signing of affidavits (which are not imposed on married couples) make it difficult to establish a fraudulent relationship.

In political jurisdictions where domestic partnerships are being considered, the conservative response is usually rapid and very strong. Despite the fact that enacting domestic partnerships falls far short of granting the full benefits of marriage, many conservatives are opposed to their existence, arguing that legal recognition of same-sex relationships is tantamount to approval of homosexuality.

The pattern is for conservatives to say that they are in favor of domestic partnerships or civil unions when same-sex marriage is debated, but then to withdraw their support and fight equally hard against domestic partnerships.

Conservative groups have, with occasional success, brought suit against municipalities that have offered domestic partner benefits or established domestic partner registries, alleging that such actions encroach on the powers of states to establish and regulate marriage.

Conservatives also often try to pass state Defense of Marriage Acts that define marriage as existing only between a man and a woman so that domestic partnership policies can not evolve into something bigger. Some states, particularly Georgia and Virginia, go so far as to prohibit private insurance companies within their borders from covering domestic partner health benefits. Georgia even prohibits companies from contracting with out-of-state insurers for this purpose.

Not only conservatives oppose domestic partnerships, however. Some glbtq groups are also opposed to the policies. While they are a way of providing some rights and benefits, the policies are seen as a compromise and a concession that may make it harder for full marriage equality to be obtained in the future. Some groups view domestic partnership as a kind of "marriage apartheid" that consigns same-sex couples to a separate and lesser form of union.

On the other hand, most glbtq advocates and organizations have strongly argued in favor of domestic partnerships, without abandoning arguments for marriage. For many of these individuals and groups, domestic partnerships offer a means to achieve something near equality in benefits for gay and lesbian families. In a workplace environment where fringe benefits represent a substantial fraction of one's compensation, their availability only to legally married opposite-sex couples often leads to striking inequities for same-sex couples that are, at least partially, remediated by domestic partner benefits. Especially for those whose partner or child is without health insurance, these policies can make a real difference.

Domestic partnership policies also lend some legitimacy to a relationship in the eyes of a couple's family and coworkers and force others to take the existence of a partner seriously.

Often the adoption of domestic partnership laws is a preliminary step to adopting marriage equality, as in the cases of Vermont, Connecticut, and New Hampshire.

### **Alternatives to Domestic Partnership**

Civil unions, like those originally granted in Vermont, are similar to marriages under state law--they grant the same benefits under state taxation, the same child care arrangements, the same medical decision making powers, and are even performed by officiants such as justices of the peace. However, like domestic partners, civil union partners are not eligible for federal marriage benefits.

While civil unions have many of the same problems as domestic partnerships, the rights that they grant tend to be more extensive. In European countries, for example, civil union benefits often approach the level of benefits accorded to married opposite-sex couples, but frequently do not include adoption rights.

Full marriage rights, like those granted to heterosexual couples in the United States, are another option. Full marriage would give same-sex couples equal footing with heterosexual ones with regard to finances, health care, children, divorce, and every other aspect of the relationship, including the dignity typically accorded to marriage.

However, even the states that grant full marriage rights to same-sex couples cannot grant same-sex couples equal rights. Under the federal Defense of Marriage Act, individual states are permitted to refuse to recognize same-sex marriages performed outside their borders. Moreover, federal benefits are still not available to legally married same-sex couples.

Within the confines of the institution of marriage, there are different options for the type of marriage offered. One type of marriage is religious marriage. While the United States technically maintains the separation of church and state, many marriages performed in the United States are religious marriages, where a clergy person officiates at both the religious and the civil ceremonies.

Although many religious denominations refuse to allow same-sex marriages, some denominations do allow their clergy to perform marriages, or at least "holy unions" (the religious equivalent of a domestic partnership). The United States government, whether state or federal, has no authority to prohibit same-sex religious marriages, but is also not obliged to recognize such marriages.

Civil marriage requires a ceremony with an officiant, but it is devoid of religious content. This is the type of marriage that same-sex marriage activists tend to advocate. But common law marriage is another option as well. Common law marriage does not require a marriage certificate or any sort of ceremony but instead provides the benefits of marriage to any couple who has lived together and been jointly financially responsible for a certain number of years (the number varies by jurisdiction).

Under common law marriage, many same-sex couples should be considered married, but are not, simply because of their gender. Recognition of these relationships as marriages would be a great advance from most domestic partnerships, though neither quite as beneficial nor quite as controversial as legalizing civil marriages.

### **Domestic Partnerships outside the United States**

The domestic partnership was common in some Canadian provinces until the recent attainment of marriage equality in that country. Other countries that offer extensive domestic partnership benefits, or indeed arrangements more beneficial than domestic partnership, include Denmark, France, Greenland, Hungary,

Iceland, portions of Italy, and Norway. The Netherlands, Belgium, Canada, Spain, Sweden, and Norway permit same-sex marriage. The United Kingdom offers civil partnerships that are equivalent to marriage in rights and responsibilities, but lack the religious element that is an option for heterosexually married couples.

Argentina, Australia, Israel, New Zealand, and South Africa require that employers offer some benefits for domestic partners. More limited domestic partnership benefits are available in Austria, Belgium, Brazil, Colombia, the Czech Republic, Germany, and Portugal. As the European Union moves to require its member states to enforce its guarantees of equal rights, the number of states that recognize domestic partnerships is likely to grow.

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