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## ADOPTION BENEFIT PROGRAMS LGBT CONSIDERATIONS FOR EMPLOYERS

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November 9, 2009

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Adoption legally establishes a permanent parent-child relationship between a minor and an adult, granting that parent decision-making rights.<sup>1</sup> Since the mid-1980s, Americans have adopted around 130,000 children annually.<sup>2</sup> Most people know family members or close friends who have adopted<sup>3</sup> and nearly four in ten adults have considered adoption at some point in their lives.<sup>4</sup> At the same time, more than 50 percent of adults say the cost of adoption is a major concern.<sup>5</sup> Adoption expenses range anywhere from \$0 to more than \$40,000 depending on the type of adoption. Although tax credits are available for some adoptions, many families still cannot afford to adopt.

U.S. employers increasingly offer adoption benefit programs, including financial assistance and work leave, for employees who adopt a child. Direct financial assistance plays a large role in making adoptions affordable. Leave time is crucial to both the adoption process and the bonding process between children and adoptive parents. A 2007 Hewitt Associates survey of 1,000 major U.S. employers found that 47 percent offered some form of adoption benefits compared to just 12 percent in 1990.<sup>6</sup> The 2009 Dave Thomas Foundation for Adoption survey of adoption benefit programs shows more employers than ever before now offer these benefits.<sup>7</sup>

Adoption benefit programs make a tremendous, immeasurable difference to employees and the children they adopt. There is also a large, measurable societal impact in making more adoptions possible. In the case of public adoptions, for example, when a child enters the foster care system at the age of three and is adopted, this saves local, state and federal governments between \$65,422 and \$126,825<sup>8</sup> — or \$3.3 billion and \$6.3 billion in total for the 50,000 children adopted from foster care each year.<sup>9</sup>

Adoption benefits are popular among all employees, not just those creating a family through adoption. In fact, 95 percent of Americans believe that adoptive parents should receive the same maternity and paternity benefits from employers as biological parents.<sup>10</sup> As a result, adoption benefits can be a significant recruitment and retention tool.

These programs are low cost, require minimal administration and can be scaled to match the employer's size, budget and work/life programs. And, despite their popularity, utilization rates continue to remain low with less than 1 percent of eligible employees using the benefit in an average year.<sup>11</sup>

Furthermore, an adoption benefit program demonstrates an employer's commitment to equity, diversity and fairness, sending a message of support to all employees building families. This message can be especially important to lesbian, gay, bisexual and transgender employees as they consider adoption. While information is limited with respect to bisexual and transgender parents, data shows lesbian and gay parents are raising approximately 65,500 adopted children and youth in the U.S., accounting for more than 4 percent of all adopted children.<sup>12</sup> Recognizing the value of these benefits, leading LGBT-inclusive employers offer adoption benefit programs that treat LGBT<sup>i</sup> employees fairly.<sup>13</sup> Employers should implement these programs, or update existing adoption benefit programs, with an eye toward LGBT inclusion.

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<sup>i</sup> The document examines adoption benefits as they pertain to the lesbian, gay, bisexual and transgender people, particularly focusing on barriers that same-sex couples face. Because transgender people may identify as lesbian, gay, bisexual or straight and are often in, or perceived as being in, same-sex relationships, they and their partners often face the same barriers to adoption or parental rights, in addition to barriers stemming from their gender identity or expression.

## PARENTING AND THE LGBT COMMUNITY

American media coverage often portrays LGBT parents as two women having a child through donor insemination or two men having a child through surrogacy. In reality, LGBT individuals and same-sex couples become parents in a variety of ways, including assistive reproductive technology (i.e., donor insemination, in vitro fertilization or surrogacy), adoption, foster care and previous different-sex relationships.

Based on the 2000 Census, an estimated 20 percent of same-sex couples have a child under 18 living in their home and at least 270,000 children are being raised by same-sex couples.<sup>14</sup> These estimates are considered conservative because the 2000 Census most likely underreports same-sex couples and does not track single lesbian, gay and bisexual parents at all. The Census also does not track single or partnered transgender parents. At the same time, more than half of gay men and 41 percent of lesbians want to have a child,<sup>15</sup> and an estimated two million lesbian, gay and bisexual Americans are interested in adopting.<sup>16</sup> Research shows that lesbian and gay prospective adopters are willing to parent a wider range of children than the general public, including older children and those with behavioral or emotional problems.<sup>17</sup>

Twenty-five years of social science research shows that children raised by lesbian and gay parents do just as well as those raised by heterosexual parents. For example, there are no significant differences on measures of social and psychological adjustment when comparing children of lesbian mothers and heterosexual mothers.<sup>18</sup> Similarly, studies show no negative effects of transgender parenting.<sup>19</sup>

A number of professional and child advocacy groups in the U.S. have issued statements of support for adoption by lesbian and gay individuals and couples.<sup>20</sup> Adoption and foster care agencies are updating their policies and practices to welcome and support prospective LGBT parents. A 2003 study by the Evan B. Donaldson Institute found that 60 percent of adoption agencies accept applications from same-sex couples and around 40 percent had placed children with these families.<sup>21</sup>

## ADOPTION AS PATH TO PARENTHOOD

Individuals and couples creating a family through adoption may choose either public or private adoptions.

Public adoption refers to adopting children and youth from the public child welfare system. These children tend to be older and live in foster care after having been removed from their homes due to abuse or neglect. More than 500,000 children are in foster care in the U.S. and 129,000 of these children currently await adoption.<sup>22</sup> An estimated 14,000 children live with lesbian or gay foster parents (nearly 3 percent of foster children overall).<sup>23</sup> Each year, 20,000 to more than 26,000 youths exit the foster care system as adults without having found permanent families.<sup>24</sup> These youths are at higher risk for poor educational results, minimal employment prospects and inadequate housing.<sup>25</sup>

Private adoptions include:

- adoptions through for-profit or not-for-profit agencies and
- independent adoptions in which birth parents relinquish their parenting rights directly to adoptive parents rather than an agency, usually with the assistance of an adoption attorney.

## COSTS OF ADOPTION

Adoption expenses include both universal expenses, those incurred by everyone who adopts, and adoption-specific expenses, those specific to the type of adoption being pursued.

Universal expenses include home study expenses and legal fees. Pre-finalization, a home study is conducted to evaluate and prepare the prospective parents for the adoption, ensuring an appropriate match between the child and parents. Legal fees are incurred by the majority of adoptive parents because all domestic adoptions and some international adoptions must be finalized by a U.S. court.

<b>Range of Adoption Costs</b> (Adapted from Child Welfare Information Gateway)	
Foster Care Adoptions	\$0 - \$2,500
Licensed Private Agency Adoptions	\$5,000 - \$40,000+
Independent Adoptions	\$8,000 - \$40,000+
Facilitated/Unlicensed Adoptions	\$5,000 - \$40,000+
International Adoptions	\$7,000 - \$30,000

Adoption-specific expenses are incurred in addition to universal expenses and vary depending not only on the type of adoption but also on the specific circumstances of each adoption. For example, a private domestic infant adoption can cost anywhere from \$5,000 to \$40,000 depending on whether the adoption is done through a private agency or independently.<sup>26</sup> Private agency costs generally include birth parent counseling, adoptive parent training and social work services. Independent adoptions may include medical expenses for the birth mother or advertising fees.

Public adoptions cost significantly less than private adoptions because many of the expenses are defrayed by public funding (e.g., there may be no charge for conducting the home study for a foster care adoption). These adoptions can range from \$0 – \$2,500.<sup>27</sup>

## LEGAL LANDSCAPE AND SECOND PARENT ADOPTION

Because same-sex couples do not have the same relationship recognition and parenting rights as different-sex spouses under federal and many state laws, adoption is a part of the process of securing legal parental rights for many LGBT parents — both those who choose adoption as the primary means to create their families and those who do so through assistive reproductive technology. Further complicating matters, LGBT individuals and same-sex couples do not enjoy consistent adoption rights and opportunities from state to state.

In its classic sense, adoption involves a prospective parent or parents who have no legal or biological connection to the child being adopted. When unmarried couples carry out this type of adoption it is known as a “joint adoption.”

- **Joint adoption** is the legal procedure which allows an unmarried couple to adopt a child together, giving both parents legal custody of the child.

However, the majority of states do not expressly allow joint adoption by same-sex couples. In order to secure legal parental rights for both parents when joint adoption is not available, same-sex couples in the ten states with what is called “second parent adoption” can perform two separate adoptions, (1) the primary adoption by one parent, and then (2) a second parent adoption.

- **Second parent** adoption allows a parent to adopt their partner’s biological or adoptive child without terminating the first parent’s legal status as a parent. These adoptions give the children of same-sex parents the security of two legal parents. Second parent adoptions also protect the rights of the second parent, by ensuring that they will continue to have a legally recognized parental relationship to the child if the couple separates or if the biological (or original adoptive parent) dies or becomes incapacitated.

Due to the lack of legal recognition of same-sex relationships in most states, same-sex couples may also pursue second parent adoption in certain situations that do not involve a primary adoption. For example, when two women have a child through donor insemination, depending on the state law, the non-gestational mother may need to establish her parental rights through adoption. Or, alternatively, if two male partners choose surrogacy with one of the partners donating the sperm, again depending on the laws of their state, the second partner may need to adopt the child to establish his parental rights while terminating those of the surrogate. Both of these adoptions are second parent adoptions (see [Table A](#) for other scenarios where second parent adoptions are necessary).

Like other forms of adoption, second parent adoptions involve costs related to home studies (with the exception of some jurisdictions that waive this requirement) and legal fees. On average, second parent adoptions cost from \$2,000 to \$3,000 including home study expenses which range between \$1,000 and \$2,000 and legal fees of approximately \$1,000.

In states where second parent adoption is not possible, the “second parent” can rely on other legal arrangements to secure some level of guardianship rights — including co-parenting agreements, standby guardianship, wills and power of attorney — with the assistance of a lawyer. However, these legal arrangements are often costly to secure and generally provide fewer rights to the parent and fewer protections to the child.

## **ADOPTION & RELATIONSHIP RECOGNITION LAWS STATE TO STATE**

Most states do not have laws that recognize or facilitate adoption or foster parenting by LGB individuals or same-sex couples, and no state laws address transgender adoptive or foster parents. Here is a brief summary of the state laws and court cases related to adoption and foster parenting by LGB individuals and same-sex couples as of November 9, 2009.

### **STATES THAT PERMIT ADOPTION BY LGB INDIVIDUALS & SAME-SEX COUPLES**

Only sixteen states have laws, regulations or court rulings that make clear that LGB individuals or same-sex couples are permitted to adopt. State laws do not address adoption by transgender individuals. (See [Table B](#)).

- Ten states and the District of Columbia permit joint adoptions by same-sex couples: **California, Connecticut, District of Columbia, Illinois, Indiana, Maine, Massachusetts, New Jersey, New York, Oregon and Vermont**. Same-sex couples have obtained joint or second parent adoptions in various counties of **Nevada** and **New Hampshire** (see [Relationship Recognition Laws & LGBT Adoption](#)).
- Nine states and the District of Columbia permit second parent adoptions: **California, Colorado, Connecticut, District of Columbia, Illinois, Massachusetts, New Jersey, New York, Pennsylvania and Vermont**. Same-sex couples have successfully petitioned for second parent adoption in some jurisdictions of several states.
- Five states’ laws or regulations expressly prohibit discrimination against individuals based on sexual orientation in the adoption process: **Maryland, Massachusetts, Nevada, New Jersey and New York**.

### **STATES WITH LIMITATIONS ON ADOPTION BY LGB INDIVIDUALS & SAME-SEX COUPLES**

- **Florida** alone bans adoption by lesbian, gay and bisexual individuals or same-sex couples by law. The state does, however, permit LGB individuals and same-sex couples to serve as foster parents.
- **Mississippi** bans adoption by same-sex couples. **Arkansas** and **Utah** effectively do the same by banning adoption (as well as foster care) by individuals who cohabit with an unmarried (either same- or different-sex) partner. State courts in Michigan have ruled that unmarried individuals may not jointly petition to adopt.
- Court rulings in **Alabama, Mississippi and Virginia** have disfavored parenting by lesbian and gay biological parents, which may make placements through adoption and foster parenting challenging.

### **RELATIONSHIP RECOGNITION LAWS & LGBT ADOPTION**

The adoption process becomes less complicated for same-sex couples when states legally recognize their relationships. In states with relationship recognition, same-sex spouses (or domestic partners or parties of a civil union) can adopt together, no longer requiring joint adoptions or second parent adoptions. As of November 9, 2009:

- Same-sex marriage is legal in five states: **Connecticut, Iowa, Massachusetts, New Hampshire and Vermont**.
- **New York** and the **District of Columbia** recognize same-sex marriages entered into in another jurisdiction.

- Statewide laws provide spousal-equivalent rights, in **California<sup>ii</sup>, District of Columbia, Nevada, New Jersey, Oregon and Washington.**
- Statewide laws provide some spousal rights in **Colorado, Hawaii, Maine and Wisconsin.**

Furthermore, states with relationship recognition generally allow same-sex spouses (or domestic partners or parties of a civil union) to use the same stepparent adoption procedures that different-sex spouses use.<sup>28</sup>

- **Stepparent adoption** is the legal adoption of a child by someone who is in a legally recognized relationship with said child’s legal parent. Stepparent adoptions also terminate the rights and responsibilities of the child’s non-custodial parent.

However, when stepparent adoptions are available to same-sex couples based solely on the legal relationship structure provided by the state, LGBT parents should consider their legal options carefully as the adoption may not be recognized in another state that limits or refuses to acknowledge relationship rights of same-sex couples.

## **ADOPTION BENEFIT PROGRAMS: AN OVERVIEW**

Adoption benefit programs include two main components: (1) financial assistance through reimbursement or direct payment by an employer for adoption costs and (2) leave time, both paid and unpaid. This paper provides a discussion of these benefit programs, with a focus on relevant LGBT considerations. Employers should consult with their own tax counsel in deciding how to design an optimal and inclusive adoption benefit program.

### **FINANCIAL ASSISTANCE**

Financial assistance for adoption expenses usually ranges from \$1,000 to \$20,000, given as reimbursement or direct payment for expenses by the employer.<sup>29</sup> Adoption expenses may be reimbursed or directly paid either through a Qualified Adoption Assistance Program (QAAP) as a nontaxable benefit subject to certain limits or outside of the QAAP as taxable income for federal income tax purposes, or both. Ninety percent of respondents to the 2009 Dave Thomas Foundation for Adoption survey reported offering financial assistance through either reimbursement or direct payment as part of their adoption benefit program at an average of \$5,000 as the maximum amount.

### **QUALIFIED ADOPTION ASSISTANCE PROGRAMS – TAX FAVORED**

Qualified Adoption Assistance Programs were first created by the Small Business Job Protection Act of 1996 under Internal Revenue Code Section 137. QAAPs allow employees to exclude reimbursements or direct payments made by employers for qualified adoption expenses up to certain amounts. However, employer payroll taxes (FICA/FUTA) are still imposed on any amounts reimbursed or directly paid by an employer.

#### **Plan Requirements<sup>30</sup>**

Code Section 137 defines an adoption assistance program as a “separate written plan of an employer for the exclusive benefit of such employer’s employees.” The exclusion is not available for expenses incurred before a written plan is established.<sup>31</sup> An employer is not required to apply to the IRS for determination that the plan is a qualified program. This document, along with the Employer Fringe Benefit Guide, outlines the following plan requirements:

- Benefits-eligible employees must be given reasonable notification of the terms and availability of the QAAP. Notification must be given prior to an expense being incurred in order for the expense to be eligible for excludable reimbursement or direct payment.<sup>32</sup>

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<sup>ii</sup> California recognizes same-sex marriages that occurred between June 16, 2008 and November 4, 2008, as marriages. All other same-sex marriages occurring outside of that window are given domestic partnership status.

- Eligibility requirements of the QAAP may not discriminate in favor of highly compensated employees or their dependents. For this purpose, employees covered by a collective bargaining agreement are excludable for testing purposes, if adoption assistance benefits were the subject of good-faith bargaining between the employer and the employees' representatives.
- A QAAP will not satisfy Code Section 137 for a given year if more than 5 percent of the amounts paid or incurred by the employer for adoption assistance benefits during the year are provided to individuals (or their spouses or dependents) who own (on any day of the year) more than 5 percent of the stock or of the capital or profits interest of the employer. In such a case, all participants lose tax-favored treatment under the QAAP.
- Employees receiving the benefit must provide "reasonable substantiation" to the employer that reimbursements or direct payments are for qualified adoption expenses.

### **Qualified Adoption Expenses**

The Code and related guidance generally define qualified adoption expenses as those expenses "directly related to, and the principal purpose of which is for, the legal adoption of an eligible child" by the employee.<sup>33</sup> These expenses include, but are not limited to:

- adoption fees
- court costs
- attorney's fees
- traveling expenses (including those related to meals and lodging)

The Code technically states that qualified expenses must be incurred exclusively by *employees of the employer*. Employers should, therefore, consider counseling employees that all expenses generally should be accounted for as an expense paid for by the employee — adoption expenses should be paid out of a joint or individual checking account that includes the employee's name, and the employee's name should be on any expense receipts. In instances where an expense is paid for by the non-employee spouse or partner, a reimbursement to the non-employee spouse or partner from the employee for the expense, as well as written certification to that effect, would seem to suffice. This would only seem to suffice in instances where the employee is adopting (i.e., the employee is adopting the child and the non-employee spouse or partner paid for an expense or the employee and the non-employee spouse or partner are adopting jointly and the employee's spouse/partner paid for an expense initially).

### **Unqualified Expenses**

Several categories of expenses are explicitly *unqualified* and thus cannot be reimbursed or directly paid by an employer through a QAAP on a tax-favorable basis, including:

- expenses for which the employee received funds under any state, local or federal program
- expenses incurred in violation of federal or state law
- expenses incurred as part of a surrogate parent arrangement
- expenses incurred through the adoption of a child of the employee's spouse (i.e., stepparent adoption)
- expenses paid or reimbursed elsewhere (e.g., by another employer or through a tax credit).

Note on international adoption: Expenses incurred regarding international adoption will not be considered qualified unless the adoption becomes final.

### **Eligible Children**

Adoption expenses are not eligible for tax-favored reimbursement or direct payment unless an employee adopts an "eligible child." Eligible children are under the age of 18 or physically or mentally incapable of caring for themselves.

Employees that adopt "special needs" children — children who either cannot or should not be returned to their parents and due to specific factors cannot be placed without adoption assistance — are eligible for the maximum

exclusion from income, regardless of actual expenses incurred for the adoption. Although still subject to the income limits below, the employee is deemed to have incurred expenses in an amount equal to the maximum exclusion in the year the adoption becomes final.

## **ADOPTION ASSISTANCE LIMITS**

### **Qualified Reimbursements Dollar Cap**

The Code limits the dollar amount eligible for reimbursements or direct payments through QAAPs. This dollar cap is adjusted for inflation and thus may change from year to year. For 2009, the adjusted dollar cap limit on reimbursements or direct payments on a tax-favorable basis is \$12,150.<sup>34</sup> This dollar cap applies to each eligible adoption and is cumulative over all taxable years of the employee. For example, if an individual incurs \$6,000 of qualified expenses in 2008 and \$7,000 in 2009 with respect to an eligible adoption, such individual could reimburse the full \$6,000 of expenses on a tax-favorable basis in 2008, but could only reimburse on a tax-favorable basis \$6,150 of the \$7,000 of expenses incurred in 2009. The same \$12,150 cap applies regardless of whether a married couple, an unmarried couple or a single individual adopts a child. This means that an unmarried couple that adopts a child must apply the dollar cap to their combined expenses.

### **Adjusted Gross Income Limitations**

An individual must have a modified adjusted gross income at or below certain specified limits in order to receive the tax benefits of the QAAP. Generally, for 2009, the exclusion and tax credit provided under Code Section 137 begin to phase out for individuals with a modified adjusted gross income greater than \$182,180, and are entirely phased out for individuals with a modified adjusted gross income of \$222,180 or more.<sup>35</sup>

### **Coordination with Federal Adoption Tax Credit**

Code section 23 allows an individual taxpayer to claim an adoption tax credit for expenses incurred in connection with an adoption that are not otherwise reimbursed or directly paid by another individual or entity (including through a QAAP). To ensure that employees maximize the tax benefits available to them, employers should consider alerting their employees to the availability of the adoption tax credit in any communications regarding their QAAP (see [Appendix B: Adoption Tax Credit](#)).

## **REIMBURSEMENTS AND DIRECT PAYMENTS OUTSIDE OF QAAP**

Recognizing the limitations imposed by the requirements of a QAAP, some employers offer additional, non-tax-favorable adoption benefits. These include covering the costs of unqualified expenses (the reimbursement or direct payment of any unqualified adoption expense is considered taxable income) and reimbursing or paying for costs over the dollar cap. For example, Kraft Foods will reimburse for costs associated with a stepparent adoption; these costs are unqualified. And five of the 2009 top 100 adoption-friendly employers reported to the Dave Thomas Foundation for Adoption that their maximum reimbursement amount was over the IRS adoption assistance dollar cap (the highest reported was \$24,300).

## **ADOPTION ASSISTANCE AND CAFETERIA PLANS**

Whether or not these benefits are offered as part of a QAAP, employers can manage these benefits through pre-existing Section 125 cafeteria plans. These plans allow employees to fund their own adoption through pre-tax contributions to a specified account for later reimbursement. By providing adoption financial assistance through an existing cafeteria plan, an employer can support adoptive parents without having to directly pay for the QAAP benefits (since the employee's expenses would be reimbursed from salary reduced amounts contributed on a pre-tax basis by the employee).

- Salary reduction election should be made before the plan year in which adoption expenses are incurred.
- Unlike many other benefits provided through cafeteria plans, reimbursements of qualified adoption expenses from a cafeteria plan are subject to federal payroll taxes.

However, the requirement that salary reduction election be made before the plan year in which adoption expenses are incurred can pose challenges to employees. Therefore, managing adoption financial assistance as part of a cafeteria plan has its drawbacks.

## **PAID LEAVE**

Leave time for adoption is helpful for employees both before and after the completion of an adoption. The adoption process can be lengthy and steps such as home studies or travel needs may require an employee to take time away from work. Leave time for adoption is crucial post-finalization as it supports the employee's need to bond with the adopted child.

Adoption benefits can include paid leave time ranging from one to six weeks. Forty-eight percent of respondents to the 2009 Dave Thomas Foundation for Adoption survey reported offering paid leave as part of their adoption benefit programs at an average of five weeks as the maximum amount of leave time available.

## **ADOPTION LEAVE & FAMILY AND MEDICAL LEAVE ACT**

Unpaid leave time included in adoption benefit programs ranges from one week to one year. If the employer has fifty or more employees and is thus regulated by the Family and Medical Leave Act, adoption-related unpaid leave time can count toward an employee's FMLA leave or be offered in addition to the twelve weeks already required under FMLA.

## **PROGRAM COMPONENTS & LGBT INCLUSION**

Noted below are specific recommendations for LGBT inclusion within adoption benefit programs. These recommendations are based on the goal of parity of outcome between LGBT employees and their non-LGBT counterparts.

### **PROGRAM MATERIALS AND SUMMARY OF BENEFITS FOR EMPLOYEES**

Providing a brief overview or summary of the adoption benefit program gives the employer the opportunity to clearly state a commitment to employees building families through adoption. This statement should highlight the LGBT inclusiveness of the program by explicitly mentioning the LGBT community or by using broad language such as "all employees who are building families."

- Sample language: This Adoption Benefit Program was developed to help you find adoption resources, dedicate the time needed to pursue adoption and pay some of the expenses. It is part of our commitment to supporting all employees who are building families, helping you integrate your work and personal life.

### **BENEFIT ELIGIBILITY & FINANCIAL ASSISTANCE GUIDELINES**

Employers should make it clear who is eligible for these benefits as well as any requirements for the children to be considered for the benefit. This includes information related to full time/part time employment status or tenure prior to eligibility. Written plan materials should also provide detailed guidance on what expenses will be reimbursed or directly paid and whether they are qualified for tax-favorable reimbursement.

#### **Qualified vs. Unqualified Expenses**

The adoption process is complicated for LGBT employees due to limited adoption rights and relationship recognition, adding steps that may necessitate unqualified expenses (e.g., costs incurred when an employee's partner pursues a second parent adoption). Employers should be aware of these legal limitations LGBT employees face and reimburse or directly pay expenses with a goal of parity of outcome between LGBT and non-LGBT employees. Adoption benefit programs should make clear whether or not unqualified expenses will be reimbursed or directly paid (see [Table A: LGBT Adoption – Qualified or Unqualified Expenses?](#)). The policy recommendations and

sample policy language throughout this section include notes specific to the treatment of qualified and unqualified expenses.

- Sample language: Adoption Benefit Program provides financial assistance to reimburse or directly pay certain adoption expenses, *both qualified and unqualified*, for an employee. *Unqualified* expenses will be reimbursed or directly paid on a fully-taxable basis. The financial assistance is not to exceed [amount of maximum reimbursement/direct payment], incurred by the employee in the adoption of any one eligible child.

<b>Taxation of Reimbursements and Direct Payments</b>	
Qualified Reimbursement/Payment	Not subject to federal income taxation. Subject to federal payroll taxation. May be subject to state income taxation.
Unqualified Reimbursement/Payment	Subject to federal income taxation. Subject to federal payroll taxation. Subject to state income taxation.

### **Parity for Domestic Partners**

A key consideration when implementing an adoption benefit program is whether to cover adoption costs incurred by a benefits-eligible employee’s spouse or domestic partner. To be equitable, any adoption benefit that reimburses costs incurred by an employee’s spouse should also cover those incurred by an employee’s partner.

As discussed in the overview of adoption benefit programs, in order to be qualified for tax-favored reimbursement under a QAAP, adoption expenses must be incurred *by an employee* in relation to an adoption of a qualified child. Therefore, in cases where the employee’s spouse/partner is completing the adoption, it appears that expenses incurred with respect to such adoption are not eligible for tax-free reimbursement or direct payment from a QAAP. Nonetheless, an employer could decide to provide for the reimbursement or direct payment of these adoption expenses on a fully taxable basis outside of the QAAP.

It may not always be in the best interests of the employee and the employee’s partner to have the employer reimburse or directly pay adoption expenses incurred by the partner. In certain instances, it may be more advantageous from a tax perspective for the partner to claim the individual tax credit under Code Section 23 (see [Appendix B: Adoption Tax Credit](#)).

- Sample language: All full-time employees are eligible for adoption benefits immediately upon hire for the adoption of a child by the employee and/or the employee’s spouse or domestic partner, including financial assistance for qualified expenses through a Qualified Adoption Assistance Program and paid leave. Financial assistance for the adoption of a child by a spouse/partner of an employee shall be provided to the employee on a fully taxable basis from outside of the QAAP. Employees are encouraged to seek professional tax advice regarding whether they or their spouse/partner should elect adoption benefits versus claiming the Adoption Tax Credit that may be available to them under Section 23 of the Internal Revenue Code.

### **Eligible Children & Second Parent Adoption**

For LGBT couples in many states, it is necessary for the employee or the employee’s same-sex spouse or domestic partner to adopt a child biologically related to their spouse/partner (see situations 3 and 4 in [Table A](#)). Therefore, employers should specify whether they will reimburse or directly pay costs related to the adoption of a child who is the biological child of the employee or the employee’s same-sex spouse/partner. Employers should also consider reimbursing or directly paying costs related to the adoption of a child who is biologically related to the employee or the employee’s spouse/partner, but not the biological child of either (known as kinship adoption).

Costs incurred through the adoption of an employee’s *different-sex* spouse’s child (stepparent adoption) are unqualified and therefore not eligible for tax-free reimbursement or direct payment through the QAAP.

- Sample language: Adopted children, to be considered for this benefit, must be under 18 and may be, but are not required to be, the biological child of either parent or biologically related to either parent.

Employers should note specifically in the policy if expenses incurred through second parent adoptions will be reimbursed or directly paid, also making clear what reimbursements or direct payments will be made on a fully taxable basis.

<b>Second Parent Adoptions: Qualified or Unqualified Expenses?</b>	
Employee adopts same-sex spouse/partner's child	Qualified
Employee's same-sex spouse/partner adopts employee's child	Unqualified

QAAP requirements state that in order to be considered qualified, adoption expenses must not be related to the adoption of the child of an employee's (federally-recognized) spouse. However, the Defense of Marriage Act of 1996 defines "marriage" as only a legal union between one man and one woman and defines "spouse" as a person of the opposite sex who is a husband or wife. This means that same-sex couples, even if married or parties of a civil union or domestic partnership in their state, will not be considered spouses for purposes of federal law. **As a result of DOMA, it appears that costs incurred through a second parent adoption where an employee adopts the child of their same-sex spouse or domestic partner will be *qualified*.**

- Sample language: Costs associated with a second parent adoption will be reimbursed or directly paid. Note that if the adoption is completed by the employee's spouse/domestic partner these costs will be reimbursed or directly paid through the program on a fully taxable basis.

### **Surrogacy**

Costs directly related to a surrogacy arrangement (e.g., medical expenses of surrogate) are unqualified expenses. The majority of adoption benefit programs do not reimburse or directly pay these costs. However, costs incurred as part of the adoption of a child conceived through surrogacy may be qualified depending on whether it is the employee (qualified) or the employee's spouse/partner (unqualified) completing the adoption.

- Sample language: Costs directly related to a surrogacy arrangement (e.g., medical expenses of surrogate) *will not* be reimbursed or directly paid. Costs incurred as part of an adoption of a child conceived through surrogacy *will* be reimbursed or directly paid. Note that if the adoption is completed by the employee's spouse/domestic partner these costs will be reimbursed or directly paid through the program on a fully taxable basis.

### **Travel**

Plans should be written to ensure that adoption-related travel expenses of the employee and the employee's spouse or partner are reimbursed by the employer.<sup>36</sup>

- Sample language: Costs associated with travel expenses (including meals and lodging) of an employee and the employee's spouse or domestic partner, as applicable, in connection with adoption of an eligible child will be reimbursed by the employer.

### **Reimbursement Timeline**

Policies should also specify when an employee can apply for reimbursement or direct payment of adoption costs and whether the adoption must be completed prior to reimbursement or direct payment.

## **ADOPTION LEAVE OF ABSENCE GUIDELINES**

On average, employers provide a maximum of five weeks of paid adoption leave. Policies should indicate whether paid leave will count towards the 12 weeks of FMLA leave (in the case of employers with 50 or more employees).

- Sample language: Paid adoption leave [will/will not] count toward FMLA leave.

Employers should also consider broadening maternity/paternity leave policies to cover surrogacy. Some employers limit FMLA-style benefits to “natural childbirth” or “adoption.” It is unclear if the surrogate’s pregnancy is considered “natural childbirth” and adoption may not be finalized when the child is brought home.

### **Gender of Parent**

Maternity and paternity leave policies can sometimes provide mothers with longer leave than fathers as a blanket rule. Employers should modify leave policies to make them gender neutral, providing longer leave for a primary caretaker and shorter leave for a secondary caretaker.<sup>37</sup>

- Sample language: An employee who adopts, *regardless of the employee’s gender*, is eligible for up to [amount of time] of paid leave.

## **OTHER CONSIDERATIONS**

### **COMMUNICATING YOUR ADOPTION BENEFIT PROGRAM**

The Dave Thomas Foundation for Adoption provides resources for employers looking to effectively communicate adoption benefit programs (whether newly offered or updated). Below are specific considerations for communicating the inclusiveness of these benefits:

- Provide LGBT-inclusive adoption resources to supervisors and human resources staff to increase their understanding of adoption.
- Send communication to all employees using inclusive language (e.g., “parents” rather than “mother” and “father”).
- Highlight policy components that support diverse families (e.g., reimbursement of costs incurred as part of a second parent adoption).
- Send announcement to LGBT employee group highlighting benefit components of special interest to the LGBT community (e.g., reimbursement of costs incurred by same-sex spouse/domestic partner).

### **EMPLOYEE ASSISTANCE PROGRAMS**

Employee Assistance Programs often offer adoption-specific assistance; helping employees understand the adoption process, connect with employees who have adopted, provide a referral service to adoption agencies or attorneys and even locate childcare post-adoption. The Dave Thomas Foundation for Adoption also outlines specific examples of how an employee assistance program can support adoptive parents.<sup>38</sup> These recommendations include:

- *Invite a local adoption or child welfare agency to present an overview of adoption to employees.* When working with specific agencies, employers should ensure their EAP is familiar with the possible barriers to adoption LGBT employees may face in their state and that LGBT inclusive options are available, when possible.
- *Host workshops for employees considering adoption or those who have already adopted.* When working to connect employees with outside resources (on adoptive parenting, financing an adoption, etc.) or helping employees to connect with each other through adoption networks, employers should communicate the importance of LGBT inclusion to those leading these efforts.

***The information in this document does not constitute legal advice. For assistance with legal questions specific to your situation, please consult an attorney. For questions or comments about this document, e-mail [workplace@hrc.org](mailto:workplace@hrc.org).***

## TABLES

### TABLE A: LGBT ADOPTION - QUALIFIED OR UNQUALIFIED EXPENSES?

Situation		Adoption(s)	Qualified?	
<b>1. Employee completes single/unmarried adoption.</b>	A. Heterosexual	Employee adopts child as single parent.	Yes	
	B. Lesbian/gay/bisexual	Employee adopts child as single parent.	Yes	
<b>2. Employee &amp; significant other begin adoption process together both as intentional parents.</b>	A. Different-sex spouses*		Employee & spouse adopt jointly, both receiving legal parental rights.	Yes
	Same-sex couple	B. Relationship recognition	Employee & spouse/partner adopt jointly, both receiving legal parental rights.	Yes
		C. No relationship recognition. Joint adoption available.	Employee & same-sex significant other perform joint adoption, both receiving legal parental rights.	Yes
		D. No relationship recognition. Second parent adoption available.	Primary adoption AND	Yes (if employee) No (if employee's spouse/partner)
			Second parent adoption	Yes (if employee) No (if employee's significant other)
E. No relationship recognition. No joint or second parent adoption available.	ONLY single/individual adoption by employee OR	Yes (if employee) No (if employee's significant other)		
<b>3. Employee adopts child of significant other.</b>	A. Different-sex spouses*		Stepparent adoption.	No
	Same-sex couple	B. Relationship recognition	Stepparent adoption.	Yes
		C. No relationship recognition. Second parent adoption available.	Second parent adoption.	Yes
		D. No relationship recognition. No joint or second parent adoption available.	No adoption possible.	N/A
<b>4. Employee &amp; significant other have child conceived through donor insemination.</b>	A. Different-sex spouses*		No adoption necessary. Employee and spouse are automatically legal parents of child.	N/A
	Same-sex couple	B. Relationship recognition	Depending on law, second parent adoption may be necessary.	Yes (if employee) No (if employee's spouse/partner)
		C. No relationship recognition. Second parent adoption available.	Second parent adoption.	Yes (if employee) No (if employee's spouse/partner)
		D. No relationship recognition. No joint or second parent adoption available.	No adoption possible.	N/A
<b>5. Employee &amp; significant other have child through surrogacy arrangement.</b>	A. Different-sex spouses*		Depending on law, stepparent adoption may be necessary.	No
	Same-sex couple	B. Relationship recognition	Second parent adoption.	Yes <sup>†</sup> (if employee) No (if employee's spouse/partner)
		C. No relationship recognition. Second parent adoption available.	Second parent adoption.	Yes <sup>†</sup> (if employee) No (if employee's spouse/partner)
		D. No relationship recognition. No joint or second parent adoption available.	No adoption possible.	N/A

\* While not all different-sex couples seeking to adopt are married, this table was designed to highlight discrepancies in the treatment of adoption by same-sex couples and different-sex spouses. Laws and practice related to **adoption by** unmarried, different-sex couples vary from state to state – see [www.unmarried.org/adoption.html](http://www.unmarried.org/adoption.html) for more information and resources.

† As discussed above, the exclusion would only apply to qualified adoption expenses incurred in connection with a second parent adoption and not to those expenses incurred in carrying out any surrogate parenting arrangement.

**TABLE B: STATES THAT PERMIT ADOPTION BY LGB INDIVIDUALS & COUPLES**

States that Permit Adoption by LGB Individuals & Couples			
State	Joint Adoption Available	Second Parent Adoption Available	Prohibits Discrimination on basis of sexual orientation in adoption process
Alabama		✓ *	
Alaska		✓ *	
California	✓	✓	
Colorado		✓	
Connecticut	✓	✓	
Delaware		✓ *	
District of Columbia	✓	✓	
Illinois	✓	✓	
Indiana	✓		
Iowa		✓ *	
Louisiana		✓ *	
Maine	✓		
Maryland		✓ *	✓
Massachusetts	✓	✓	✓
Minnesota		✓ *	
Nevada	✓ *	✓ *	✓
New Hampshire	✓ *	✓ *	
New Jersey	✓	✓	✓
New Mexico		✓ *	
New York	✓	✓	✓
Oregon	✓	✓ *	
Pennsylvania		✓	
Rhode Island		✓ *	
Texas		✓ *	
Vermont	✓	✓	
Washington		✓ *	
*State where same-sex couples have successfully petitioned to jointly adopt or for second parent adoptions <i>in some jurisdictions</i> .			

## APPENDICES

### APPENDIX A: ADDITIONAL RESOURCES

#### Adoption Benefit Programs Overview & Benchmarking

- **Dave Thomas Foundation Adoption Assistance Toolkit**  
This resource includes an Adoption Benefits Fact Sheet, Sample Adoption Benefits Proposal, Sample Adoption Benefits News Release, Sample Adoption Benefits Policy and Frequently Asked Questions from Employees. Available to order free:  
<http://www.davethomasfoundation.org/Adoption-Resources/Free-Materials/Adoption-Benefits>

#### Qualified Adoption Assistance Program Requirements

- **Employer's Tax Guide to Fringe Benefits**  
Outlines the fringe benefit exclusion rules for Qualified Adoption Assistance Programs:  
[www.irs.gov/pub/irs-pdf/p15b.pdf](http://www.irs.gov/pub/irs-pdf/p15b.pdf)
- **IRS Notice 97-9: Adoption Assistance** (page 35)  
[www.irs.gov/pub/irs-irbs/irb97-02.pdf](http://www.irs.gov/pub/irs-irbs/irb97-02.pdf)
- **Qualified Adoption Expenses. Department of the Treasury Internal Revenue Service Form 8893**  
[www.irs.gov/pub/irs-pdf/f8893.pdf](http://www.irs.gov/pub/irs-pdf/f8893.pdf)
- **Adoption Assistance Plans: Frequently Asked Questions**  
A free resource provided by McDermott Will & Emery's Kids First Initiative in partnership with Thompson Publishing Group Inc.  
[www.mwe.com/info/probono/adoption.html](http://www.mwe.com/info/probono/adoption.html)

#### LGBT-Specific Resources

- **All Children All Families**  
The Human Rights Campaign Foundation *All Children – All Families* program recognizes adoption and foster care agencies that welcome LGBT parents. This program promotes policies that welcome LGBT prospective parents through improved cultural competence by adoption and foster care agencies and educates the LGBT community on opportunities for foster and adoptive parenting.  
[www.hrc.org/acaf](http://www.hrc.org/acaf)
- **FMLA & LGBT Workers**  
[www.hrc.org/issues/fmla\\_benefit.htm](http://www.hrc.org/issues/fmla_benefit.htm)
- **Map of LGB-Specific Adoption Laws by State**  
[www.hrc.org/documents/parenting\\_laws\\_maps.pdf](http://www.hrc.org/documents/parenting_laws_maps.pdf)
- **Map of Relationship Recognition Laws by State**  
[www.hrc.org/documents/Relationship\\_Recognition\\_Laws\\_Map.pdf](http://www.hrc.org/documents/Relationship_Recognition_Laws_Map.pdf)
- **Adoption by Lesbian, Gay, and Bisexual Parents: An Overview of Current Law**  
(National Center for Lesbian Rights, 2009).  
[www.nclrights.org/site/DocServer/adptn0204.pdf?docID=1221](http://www.nclrights.org/site/DocServer/adptn0204.pdf?docID=1221)

#### General Adoption Information & Statistics

- **Child Welfare Information Gateway**  
[www.childwelfare.gov](http://www.childwelfare.gov)

## APPENDIX B: ADOPTION TAX CREDIT

Under Code Section 23, an individual taxpayer may claim an adoption tax credit for expenses incurred in connection with an adoption that are not otherwise reimbursed or directly paid for by another individual or entity, including an employer. Typically, tax-favored employer-provided QAAPs are most valuable to employees after adoption expenses have exceeded the maximum amount covered by the individual adoption tax credit. This is because, for employees who expect to have federal income tax liability in the current tax year or near term, the value of the tax credit to employees generally exceeds the value of the QAAP exclusion/tax-free reimbursement. For 2009, the maximum adoption credit allowed for individuals is \$12,150 (Code Section 23) for each eligible adoption. In other words, the individual may benefit more from paying for adoption expenses directly, without employer reimbursement, up to the maximum adoption credit level for that adoption.

An individual may take advantage of both the tax credit and the QAAP income exclusion discussed above in connection with the adoption of an eligible child. In other words, an individual may benefit from utilizing a QAAP for additional expenses incurred after the individual has reached the maximum adoption credit level. *However, an individual may not claim both a tax credit and an income exclusion for the same expense.*<sup>39</sup> Moreover, the tax credit may not be claimed in connection with any expense reimbursed or directly paid by an employer, regardless of whether such expense is reimbursed or directly paid outside of a QAAP (see below for further discussion).

Eligibility for the adoption tax credit is limited based on income. This limitation is the same for a single tax payer and a married couple filing jointly. Different-sex spouses must combine their income to determine eligibility. As a result of DOMA, same-sex spouses and partners cannot combine their income and are at an advantage.

To ensure that employees maximize the tax benefits available to them, employers should consider alerting their employees to the availability of the individual adoption tax credit in any communications regarding their QAAP. Although tax circumstances vary from individual to individual, to the extent that an employee has or expects federal income tax liability in the current or future years, meets the income limitations and does not anticipate incurring more than the maximum expenses permitted with regard to the income exclusion or the tax credit (i.e., \$12,150 each for 2009), the tax credit typically proves to be more valuable to an employee. Below is an example to help demonstrate this point:

Mary has an adjusted gross income of \$50,000, is subject to an effective tax rate of 10 percent, and incurs qualified adoption expenses of \$5,000 in connection with an adoption of an eligible child. Because she has an effective federal income tax rate of 10 percent and an adjusted gross income of \$50,000, Mary has a current year \$5,000 federal income tax liability.

If Mary utilizes neither the adoption tax credit nor the adoption assistance income exclusion, she will continue to have income tax liability of \$5,000. If, however, Mary utilizes the individual adoption tax credit available to her under Code Section 23, she will have \$0 income tax liability. This is because the dollar-for-dollar tax credit (thus equal to \$5,000 in Mary's instance) reduces her federal income tax liability to \$0. Notably, if Mary utilizes her employer's QAAP she will have adjusted gross income of \$45,000 and an income tax liability of \$4,500. Thus, Mary is able to maximize her tax savings by using the tax credit with respect to the full \$5,000 of expenses rather than her employer's QAAP.

Employees should be encouraged to speak to a tax attorney or other specialist that can help them make optimal decisions with respect to their tax options.

## APPENDIX C: ACKNOWLEDGEMENTS

The author wishes to recognize the following for their contributions to this report: Mark Mathis, Morgan, Lewis & Bockius LLP; Seth T. Perretta and Allison Ulman, Davis & Harman LLP; HRC Workplace Project Associate Director Samir Luther and HRC State Legislative Director Sarah Warbelow.

## WORKS CITED

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<sup>1</sup> Office of Children’s Issues, United States Department of State, Glossary. Available at: <http://adoption.state.gov/glossary.html>.

<sup>2</sup> This number of total U.S. adoptions includes all types of adoption (i.e., international adoptions, domestic adoptions (both private and public) and stepparent adoptions). Child Welfare Information Gateway, “How many children were adopted in 2000 and 2001?” August 2004. Available at: [www.childwelfare.gov/pubs/s\\_adopted/s\\_adopted.pdf](http://www.childwelfare.gov/pubs/s_adopted/s_adopted.pdf).

<sup>3</sup> Dave Thomas Foundation for Adoption & Evan B. Donaldson Institute, *National Adoption Attitudes Survey*, 2002. Available at: [www.adoptioninstitute.org/survey/Adoption\\_Attitudes\\_Survey.pdf](http://www.adoptioninstitute.org/survey/Adoption_Attitudes_Survey.pdf).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Dave Thomas Foundation for Adoption’s Adoption-Friendly Workplace Program’s *Adoption Benefits Fact Sheet*. Available at: [www.davethomasfoundation.org/Adoption-Resources/Free-Materials/Adoption-Benefits](http://www.davethomasfoundation.org/Adoption-Resources/Free-Materials/Adoption-Benefits)

<sup>7</sup> Dave Thomas Foundation for Adoption’s Adoption-Friendly Workplace Program. More information available at: [www.davethomasfoundation.org/Our-Work/Adoption-Friendly-Workplace](http://www.davethomasfoundation.org/Our-Work/Adoption-Friendly-Workplace).

<sup>8</sup> Evan B. Donaldson Adoption Institute, *Expanding Resources for Waiting Children II: Eliminating Legal and Practice Barriers to Gay and Lesbian Adoption from Foster Care*, Sept. 2008. Available at: [www.adoptioninstitute.org/publications/2008\\_09\\_Expanding\\_Resources\\_Legal.pdf](http://www.adoptioninstitute.org/publications/2008_09_Expanding_Resources_Legal.pdf)

<sup>9</sup> Ibid.

<sup>10</sup> See note 3.

<sup>11</sup> Leah Carlson Shepherd, “Happiness money can’t buy,” *Employee Benefit News*, May 1, 2009 (p. 66).

<sup>12</sup> The Williams Institute at UCLA School of Law, “Adoption & Foster Care by Gay and Lesbian Parents in the United States,” 2007. Available at: [www.urban.org/UploadedPDF/411437\\_Adoption\\_Foster\\_Care.pdf](http://www.urban.org/UploadedPDF/411437_Adoption_Foster_Care.pdf).

<sup>13</sup> Seventy-seven percent of employers that achieved a 100 percent rating on the Corporate Equality Index 2010 survey reported some form of adoption benefits for same-sex partners of benefits-eligible employees.

<sup>14</sup> Adam P. Romeo, et al., *Census Snapshot: United States*, Williams Institute, 2007. Available at: [www.law.ucla.edu/WilliamsInstitute/publications/USCensusSnapshot.pdf](http://www.law.ucla.edu/WilliamsInstitute/publications/USCensusSnapshot.pdf).

<sup>15</sup> See note 12.

<sup>16</sup> See note 8.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> R.I. Ettner & T.J.H. White, “Children of a parent undergoing a gender transition: Disclosure, risk, and protective factors,” Paper presented XVI Harry Benjamin International Gender Dysphoria Association Symposium 17 - 21 August 1999, London, *International Journal of Transgenderism*, 4(3), 2000. R. Green, “Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents,” *American Journal of Psychiatry*, 135(6), 1978 (pp. 692-697). R. Green, “Transsexual’s children,” *International Journal of Transgenderism*, 2(4), 1978.

<sup>20</sup> See note 8. (These agencies include: the Child Welfare League of America, the American Academy of Child and Adolescent Psychiatry, the American Academy of Family Physicians, the American Academy of Pediatrics, the American Bar Association, the American Medical Association, the American Psychiatric Association, the American Psychoanalytic Association, the American Psychological Association, the National Adoption Center, the National Association of Social Workers, the North American Council on Adoptable Children, and Voices for Adoption.)

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> See note 12.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

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<sup>26</sup> Child Welfare Information Gateway, “Costs of Adopting,” June 2004. Available at: [www.childwelfare.gov/pubs/s\\_cost/s\\_costs.pdf](http://www.childwelfare.gov/pubs/s_cost/s_costs.pdf)

<sup>27</sup> Ibid.

<sup>28</sup> National Center for Lesbian Rights, “Adoption by LGBT Parents,” 2009. Available at: [www.nclrights.org/site/DocServer/2PA\\_state\\_list.pdf?docID=3201](http://www.nclrights.org/site/DocServer/2PA_state_list.pdf?docID=3201)

<sup>29</sup> See note 6.

<sup>30</sup> Employer’s Tax Guide to Fringe Benefits. Available at: [www.irs.gov/pub/irs-pdf/p15b.pdf](http://www.irs.gov/pub/irs-pdf/p15b.pdf)

<sup>31</sup> IRS Notice 97-9

<sup>32</sup> IRS Notice 97-9, § II.D.1.

<sup>33</sup> 137(d) (by cross-reference to IRC § 23(d)); Notice 97-9, II.C.

<sup>34</sup> IRS Code Section 137

<sup>35</sup> Rev. Proc. 2008-66

<sup>36</sup> Todd A. Solomon, “Domestic Partner Benefits: An Employer’s Guide, 3<sup>rd</sup> Edition,” Thompson Publishing Group, June 2006 (p. 67).

<sup>37</sup> Ibid. (p. 44).

<sup>38</sup> Dave Thomas Foundation for Adoption’s brochure entitled *Beyond Benefits: More Ways to Make Your Workplace Adoption-Friendly*. Available at: [www.davethomasfoundation.org/Adoption-Resources/Free-Materials/Adoption-Benefits](http://www.davethomasfoundation.org/Adoption-Resources/Free-Materials/Adoption-Benefits).

<sup>39</sup> Notice 97-9, III.