

What you need to know about. . .

Common Law Marriage

How many times has this happened to you? During an open enrollment meeting, an employee says, "I'm not married, but can I add my girlfriend to the plan?" Because you don't offer domestic partner coverage, you answer, "No." And that appears to be that.

The next day, the employee returns arguing that he should be able to add his girlfriend to the plan because they are "common law married" in the state of Kansas, where they live. It seems obvious that he's only saying that in order to get her on the plan. After all, he changed his story overnight from "I'm not married" to "I'm common-law married." Should you allow him to add his girlfriend to the plan or not?

It's surprising how often this issue arises, especially considering how uncommon common law marriage actually is. Only a handful of states still allow it, including Kansas, Iowa, Colorado, Texas, and possibly Oklahoma (it's unclear whether common law marriage still exists there).

What is common law marriage?

The requirements for establishment (and proof) of a common law marriage vary by state, but the overriding principle is that the couple generally has to "hold themselves out" to be married. At the most basic level, this means simply that they refer to each other as "my husband" or "my wife" and/or use the same last name. Additional factors that could support the existence of a common law marriage include:

- Living together for a period of time (unfortunately there is no specific timeframe);
- Signing a lease together or owning property together;
- Having children together; and
- Having a joint bank account or other financial situations.

Note that the existence of a common law marriage is determined by the couple's state of residence, and the marriage continues even after they move out of that state.

What's to prevent an employee from lying?

Ultimately, you're going to have to take the employee's word for it. In the scenario described above, while it does seem the employee is exaggerating the relationship to get his girlfriend health insurance, at its core a common law marriage exists if the parties say it exists.

If you find that answer dissatisfactory, you're not alone. Many employers require employees to sign an affidavit and/or provide various types of documentation to support the existence of a common law marriage. While that can be helpful, it won't likely deter an employee who is already willing to deceive you.

Perhaps your best deterrent is to make it very clear to employees that by adding a significant other to the plan, they are creating compelling evidence of a common law marriage (especially if you require them to sign an affidavit). Once such a marriage exists, it is legally no different than any other marriage. That means if the couple someday decide to break up, they would have every right to sue each other for divorce, including (potentially) an equal distribution of assets and alimony. Employees should carefully consider that before making their decision.



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