



The Impact on Employers of the N.J. Civil Union Law

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For Discussion Only

Effective February 19, 2007, New Jersey marriage law will extend the same rights, privileges, and obligations of marriage to same-sex couples that form civil unions. The Civil Union law will significantly enhance the Domestic Partnership Act, enacted in 2004, and may make the prior law superfluous, since many same-sex couples can now opt for the new legal arrangement. While New Jersey workplace laws concerning discrimination and benefits administration will be amended to legally recognize civil unions, the law will have no impact on federal law, which defines marriage solely as a legal union “between one man and one woman.” This conflict may set the stage for litigation, primarily over health care benefits for civil union partners.

Changes in State Law

The primary purpose of the Civil Union law is to comply with the constitutional mandate set forth by the NJ Supreme Court in Lewis v. Harris (October 25, 2006), which held that the state constitution requires equal protection for committed same-sex couples as their opposite sex counterparts. As of February 19, 2007, same-sex couples may legally form a “civil union.” For employers, evidence of such a union will be a copy of a certificate issued by a local or State registrar.

The law expressly amends the NJ Family Leave Act, which permits eligible employees up to 12 weeks of unpaid leave within a 24-month period to care for an ill family member, which will now include a civil union partner.

Additionally, workers’ compensation benefits, including survivors’ benefits and payment of back wages to civil partners are mandated. Likewise, the legal requirements for assignment of wages have been amended. New regulations will have to be issued by the NJ Department of labor to effectuate these changes.

Similarly, employees who earn less than the maximum weekly unemployment benefit rate (\$536 in 2007) may qualify to receive “dependency benefits.” Presently a “dependent” is defined, in

part, as an unemployed spouse. New regulations will need to cover a civil union partner as a dependent for this purpose.

NJ Insurance law requires that every policy of group health care insurance to a “small employer” not otherwise covered by the Consolidated Omnibus Budget Reconciliation Act (COBRA), which covers employers with 20 or more employees, shall provide that an employee and his/her spouse and dependents may elect to continue insurance for up to 18 months where the coverage would have been lost due to termination of employment without cause or due to a reduction of the employee’s weekly hours of work to fewer than 25. Similar to a spouse and/or other dependent, civil union partners may now be covered by state insurance law. Insurance carriers must also conform their health care insurance contracts to the Civil Union law.

COBRA, however, will not be changed. Since COBRA is a federal law, the state Civil Union law cannot amend it.

Conflicts with Federal Law

Enacted in 1996, the Defense of Marriage Act (DOMA), a federal law, provides that under any federal law, rule or regulation the word “marriage” means “only a legal union between one man and one woman as husband and wife” and the word “spouse” refers “only to a person of the opposite sex who is a husband and wife.” An Opinion Letter dated November 18, 1998, issued by the US Department of Labor Office of Enforcement Policy observes that DOMA applies to the Family Medical Leave Act (FMLA). Accordingly, a civil union spouse would have no rights under the FMLA to care for an ill “spouse.” However, since DOMA does not address the issue of who may be a “parent” and since civil union couples may legally adopt children under New Jersey law, it is likely such couple would be considered “parents” under the FMLA, and therefore have the right to care for an adopted child or a child placed in foster care as any parent would have.

As noted above, COBRA is a federal law. It permits covered employees, their spouses, or dependent children to continue the coverage of a health care plan provided a qualifying event occurs, such as separation from employment or death of a covered employee. Since DOMA would apply to the definition of “spouse,” a civil union partner would have no COBRA rights.

Similarly, a civil union partner would have no entitlement as a surviving spouse under the Social Security Act.

Regardless of DOMA, nothing prevents an employer from voluntarily offering comparable FMLA and COBRA rights to civil union partners. However, to receive favorable tax treatment for health insurance premium contributions, a civil union partner must meet the definition of “dependent” under IRS Code section 152.

Major Issue with Employer-Sponsored Health Care and Retirement Benefits

The NJ Civil Union law expressly states that civil union partners have the same legal rights as spouses under “laws relating to...health and pension benefits” and its clear that insurance