



# eBenefits Alert - Same-sex Marriage in Minnesota: What Now for Employee Benefits?

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When Governor Mark Dayton signed legislation into law yesterday, Minnesota became the 12th state to recognize same-sex marriages. While ceremonies in Minnesota cannot bestow spousal rights upon same-sex couples until August 1, 2013, it is important for employers to prepare for questions involving employee benefits and coverage, and to review employer-based benefit plans and policies to understand what may be required under this change.

## ***What does the law do?***

- The law affords Minnesota state law benefits and obligations to same-sex couples on the same basis as opposite-sex couples.

## ***What doesn't the law do?***

- The law does not confer federal "spouse" status to same-sex couples
- The law does not require other states to recognize a same-sex marriage contracted in Minnesota
- The law does not require employers to offer benefit coverage to any spouse, same-sex or opposite-sex

## ***What Should Minnesota Employers Do Now?***

- Review current Plan language, insurance policies, and benefit administrative services agreements for:
  - Definition of spouse
  - Eligibility criteria
- Do the definitions and eligibility criteria include or exclude same-sex spouses?
- Determine whether changes are needed, considering:
  - Compliance with Minnesota state law
  - Possible ERISA pre-emption
- Determine whether changes are needed in employee communications
- For employers currently providing domestic partner coverage, determine whether such coverage should continue, terminate, or be modified.



### ***What about the Affordable Care Act?***

- In 2014, large group health plans must offer coverage to employees and "dependents"
- "Dependents" does not include spouses
- "Dependents" might include same-sex spouse's children

### ***Federal and State Tax Considerations***

- Some benefits (such as health care coverage) may be provided on a pre-tax basis to married spouses
- This applies to same-sex spouses for state tax law purposes in states (such as Minnesota) that recognize same-sex marriage
- The federal Defense of Marriage Act (DOMA) does not permit federal law to treat a same-sex spouse as a "spouse" for federal tax law purposes (but see "Supreme Court" considerations)
- Employers offering pre-tax benefits will still need to impute income for federal tax purposes

### ***The United States Supreme Court***

- Supreme Court heard arguments on two cases challenging DOMA
- Decision may affect federal treatment of same-sex marriage for some purposes
- DOMA provision permitting states to choose whether to honor a same-sex marriage entered into in another state is not part of the DOMA challenges

### ***Future Actions***

- Monitor Supreme Court decision
- Determine whether Supreme Court decision requires further adjustment of definitions and descriptions in Plan documents
- Multistate employers should continue to monitor actions of states in which employees work and reside

### ***Conclusion***

With the recent legislation in Minnesota, twelve states and the District of Columbia now recognize same-sex marriage. The Supreme Court will soon be issuing opinions in challenges to the federal Defense Of Marriage Act. Employers will need to pay attention -- these changes will affect offering employment based benefits to employees' family members. They will also affect plan administration, benefit communications, and taxation of employee benefits both on the federal and the state levels.

If you have any questions about how the new same-sex marriage law affects employee benefits in your organization, please call contact Monica Kelley ([monica.kelley@lathropgpm.com](mailto:monica.kelley@lathropgpm.com), 612.632.3367) or Kathi Wright ([kathi.wright@lathropgpm.com](mailto:kathi.wright@lathropgpm.com), 612.632.3384) in the Gray Plant Mooty Employee Benefits &



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