Employment Edge 86th Edition - Does the California Ruling on Same-Sex Marriage Affect Employee Benefit Rights In Minnesota?

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In light of the recent California Supreme Court ruling allowing same-sex marriages in that state, Minnesota employers may wonder if they are now required to give benefits recognition to same-sex marriages entered into in other states. For employers that do not have employees in California or Massachusetts and that are not registered to do business in those states, the short answer seems to be no, though private businesses can choose to offer domestic partner benefits on their own. This is a controversial and emerging area of the law, however, so employers will want to stay tuned to this issue to ensure that they are aware of developments.

Minnesota law currently defines marriage as "a civil contract between a man and a woman" and prohibits "a marriage between persons of the same sex." Minn. Stat. § 517.01; Minn. Stat. § 517.03(a)(4). In addition, under Minnesota law, "A marriage entered into by persons of the same sex, either under common law or statute, that is recognized by another state or foreign jurisdiction is void in this state and contractual rights granted by virtue of the marriage or its termination are unenforceable in this state." Minn. Stat. § 517.03(b).

Although the Full Faith and Credit Clause of the U.S. Constitution generally requires states to recognize marriages performed in other states, states are not required to do so if the marriage violates a strong public policy of the state. Because of the Minnesota statutes quoted above, a court is likely to find that same-sex marriage violates a strong public policy of Minnesota. Therefore, it is unlikely that a court would find that Minnesota is constitutionally required to recognize same-sex marriages performed in other states. On the other hand, Minnesota's refusal to recognize same-sex marriages performed in other states could be subject to a legal challenge in the coming years, and until a court decision is issued, there is not legal certainty regarding the constitutionality of Minnesota's refusal to recognize same-sex marriages performed in other states.

The Minnesota Human Rights Act ("MHRA") prohibits employers from discriminating on the basis of sexual orientation, but under current Minnesota law, it is unlikely that a Minnesota Court would find that the MHRA

requires employers to offer benefits to same-sex married couples because, as explained above, such marriages are not recognized under Minnesota law. In fact, the Minnesota Court of Appeals has held that the MHRA does not require employers to offer domestic partner benefits. Lilly v. City of Minneapolis, 527 N. W.2d 107 (Minn. Ct. App. 1995).

In the private sector, many companies and employers choose to offer employee benefits to employees' same-sex partners, without being required by law to do so. In the public sector, political subdivisions are currently restricted from offering same-sex domestic partner benefits. Lilly v. City of Minneapolis, 527 N. W.2d 107 (Minn. Ct. App. 1995). Other public employers, like the University of Minnesota, are not political subdivisions and thus are not precluded from offering domestic partner benefits.

Although Minnesota law does not require employers to recognize same-sex marriage, an employee's rights to benefits are contractual, so employers should check the terms of their benefit plans to ensure that the plan language is consistent with their intent to offer or not offer benefits to same-sex married couples. For example, if a benefit plan defines "marriage" as a "marriage legally entered into in any state," it is possible that a court could find that the language of the plan requires the employer to provide benefits to a same-sex spouse (married in California or Massachusetts) as a matter of contract, even if that was not the employer's intent.

If employers are asked by employees about benefits for same-sex married couples, they should be truthful but cautious in responding. Employers should truthfully state whether or not such benefits are available under the company's benefit plans, but should avoid sharing their views on homosexuality or same-sex marriage. For example, an employer that does not offer domestic partner benefits may say, "Benefits are currently only available to spouses of employees who are legally married under Minnesota law. Because Minnesota law does not recognize same-sex marriages performed in other states, benefits under our plan are not available to same-sex spouses." Employers should avoid making statements that could be seen as evidence of discrimination on the basis of sexual orientation, such as "We believe that same-sex marriage (or homosexuality) is wrong; therefore we don't offer benefits to same-sex partners." In addition, if an employee questions the lawfulness of an employer's decision not to offer benefits to same-sex spouses, that challenge may constitute "protected activity" under Minnesota's whistle-blower statute or the MHRA. Therefore, employers should ensure that employees who question such decisions are not retaliated against.

In addition, businesses that have employees in California or Massachusetts or that are registered to do business in California or Massachusetts may be impacted by the recognition of same-sex marriages in those states and should check with legal counsel about any questions they have, including questions regarding the taxation of benefits.

In summary, private businesses in Minnesota may choose to offer domestic partner benefits to their Minnesota employees, but are not required to do so, or to offer benefits to same-sex spouses in Minnesota who were married under the law of other states.

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