

Legal Update

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Complying with the Illinois Civil Union Law

By Seth A. Stern

The Illinois Religious Freedom Protection and Civil Union Act goes into effect this month. Employers should ensure that their policies and benefits plans comply with the new law.

The law allows both same sex and opposite sex couples to enter into civil unions and thereby obtain “the same legal obligations, responsibilities, protections, and benefits as are afforded or recognized by the law of Illinois to spouses.” Similar unions in other jurisdictions – whether entered into before or after enactment of the Illinois law – will also be recognized in Illinois as civil unions. Currently, Connecticut, Massachusetts, Vermont, Iowa, New Hampshire, and the District of Columbia recognize same-sex marriage, while New Jersey, Nevada, Washington, Hawaii and Oregon provide some spousal rights for same-sex couples entering into legal partnerships pursuant to state law.

Current federal law, on the other hand, defines marriage as a legal union between a man and a woman and does not extend marriage benefits to couples in civil unions.

Employers whose benefits plans are governed by state law must extend the same spousal benefits to couples in civil unions as they do to married couples. For example, employees covered by Illinois’ Health Insurance Continuation Rights may be required to provide continued health benefits to civil union partners of former employees. Employers whose plans are covered by the federal Employee Retirement Income Security Act (ERISA), however, may not be required by federal law to offer coverage to same-sex spouses, although the issue has not yet been resolved by the courts.

Even ERISA-covered employers may be required to extend the same insurance coverage to spouses in civil unions as to married couples. ERISA does not preempt state laws regulating insurance. Employers may also be required to offer survivor annuity coverage to civil union partners.

Further, employers entering into contracts or collective bargaining agreements that provide rights to spouses should extend the same rights to civil union partners, and employers providing statutory or non-statutory leave to employees for reasons related to their spouses (*e.g.*, medical leave or military leave) should extend the same rights to civil union partners to avoid discrimination complaints.

Illinois law protects against discrimination based on sexual orientation, and the constitutionality of the federal definition of marriage has been and likely will continue to be litigated. To that end, employers looking to avoid litigation and to attract qualified candidates may wish to offer spousal benefits to partners in civil unions even when not required to do so by federal law. Generosity may

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come with complications, though. For instance, an employee who is given leave to care for a civil union partner may still have all of her statutory leave time pursuant to the Family Medical Leave Act if a court were to hold that that federal statute does not cover same-sex couples.

Employers unsure of their obligations under the new civil union law, as well as employers looking to extend additional benefits to same-sex couples while avoiding unintended complications, should consult with legal counsel.

Individuals covered under the new law may also wish to consider updating their estate planning.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Jon Vegosen 312.701.6860 jvegosen@fvldlaw.com, Orley Desser, 312.701.6873, odesser@fvldlaw.com, Seth A. Stern 312.701.6837 sstern@fvldlaw.com, or your regular FVLD contact.

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