



June 11, 2008

LEGISLATIVE UPDATE

The Impact of Same-Gender Marriages In California on Employee Benefit Plans

As you know, on Thursday, May 15, 2008 the California Supreme Court issued a decision that allows for same-gender marriages. A stay was requested but was denied last week by the Supreme Court. There is an initiative on the November ballot that would nullify this ruling, but in the meantime the ruling is effective June 17, 2008. The first weddings are to take place after 5:00 p.m. on June 16th.

To view detailed information from outside legal counsel on this ruling visit http://www.wsandco.com/press_release_pdf/TruckerHuss_May08.pdf. Please note one change to the report, it indicates a June 14, 2008 effective date which was the anticipated date when the article was written.

To summarize the key points for employee welfare plans:

HEALTH PLANS

Fully insured - At present, California law requires (for plans issued in CA) insurers and health care service plans to make benefits available to Registered Domestic Partners. It is silent as to same-gender spouses. It is expected that the same requirements will apply to same-gender spouses. Note, some carriers may have policies filed with California regulators defining spouse pursuant to federal law, in which case coverage would not be extended.

Self-funded - These plans are not subject to state law (ERISA pre-emption) and therefore have no obligation to recognize same-gender spouses. Employers who want to extend coverage should check with the carrier or TPA, and the stop loss vendor.

Other plans (life, LTD, etc) - definition of beneficiary will need to be considered

SECTION 125 PLANS

Federal law - does not recognize same-gender spouses. Therefore, like an employee in a domestic partner relationship, contributions must be on a post-tax basis.

Additionally, any portion of the premium paid by the employer results in taxable income to the employee.

Unless the "spouse" is a qualified IRS tax dependent, he/she will not be eligible to submit expenses under the Spending Account portion of the plan.

California law - Since current CA law, allows Registered Domestic Partners to receive health benefits on a tax-favored basis it is expected the same will apply to same-gender marriages.



FEDERAL COBRA

Like domestic partners, same gender spouses will not be qualified beneficiaries for purposes of federal COBRA. Employers may negotiate with their carrier to provide "COBRA-like" continuation coverage. (CalCOBRA for small group (2-19) recognizes domestic partners as Qualified Beneficiaries and they may extend this to same gender marriage).

We are in the process of contacting the carriers to see how their plans are filed to define spouse. Once we have the response your Woodruff-Sawyer Benefits representative will contact you to discuss how this impacts your plans. In the meantime if you have any questions or need additional information please contact your WS&Co. Benefits representative.

This information should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

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