March 2008

Appellate Division Holds New York Employer Must Recognize Same-Sex Marriage Performed Outside of New York

New York State does not presently recognize same-sex marriages. As a result, New York's Supreme Courts have divided over the issue whether a New York employer is required to recognize a same-sex marriage performed outside of New York. At least two courts had recognized these marriages under New York's general marriage recognition rule, while at least two courts had refused to recognize these marriages on the grounds that such recognition contravened New York public policy. Recently, the Appellate Division for the Fourth Department ruled, in a case involving a plan sponsored by a government employer (a community college), that same-sex marriages performed outside of New York must be recognized in New York. According to the Court, a decision of the New York Court of Appeals indicating that the legislature could enact legislation recognizing same-sex marriage was evidence that the recognition of such marriages was not contrary to public policy. The Court also concluded that, by failing to recognize the marriage, the employer had violated the New York law prohibiting discrimination in the terms of employment because of sexual orientation.

For employers, the implications of this decision from an employee benefits perspective will depend upon the type of plan in question. For example, in the tax qualified plan context, if a participant fails to designate a beneficiary for a benefit, and he/she is married, then his/her spouse will receive the benefit. For these purposes, a partner in a same-sex marriage is not regarded as a spouse. Similarly, if a same-sex marriage dissolves, benefits may not be assigned to the same-sex partner pursuant to a domestic relations order, unless he/she qualifies as a dependent of the participant. In addition, because of ERISA preemption, self-insured plans will not be required to follow state law and need not recognize these marriages. If employers choose to do so, they need to be aware of the complexities in plan administration that may result, because in many instances providing medical benefits to same-sex partners will have adverse federal and state tax consequences for employees or may be prohibited under flexible spending accounts. However, with respect to insured plans and non-ERISA plans such as educational assistance, same-sex coverage should be provided.

If you are a New York employer and have any questions regarding compliance with this recent New York decision, please contact the undersigned.

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