



ERISA ALERT

JULY 2012

How will same-sex marriage affect employee benefit plans?

Almost one year after New York's Marriage Equality Act (the "Act") took effect, its impact on employee benefit plans continues to evolve. The Act extended all rights held by different-sex spouses to same-sex spouses. However, for purposes of federal laws including ERISA and the Internal Revenue Code ("IRC"), under the federal Defense of Marriage Act ("DOMA"), a marriage is still defined as a union between one man and one woman. The discrepancy in the definition of marriage has created an inherent conflict between New York state law and federal law. Further conflicts may exist for employers sponsoring benefit plans covering employees in more than one state, a state where same-sex marriage has been legalized and a state where it has not been legalized.

Under the Constitution's Supremacy Clause, ERISA preempts contrary state laws relating to ERISA-governed employee benefit plans, with some limited exceptions, such as in the realm of state insurance regulations. Therefore, employers who have ERISA-governed employee benefit plans, such as self-insured plans, are not required to offer the same benefits and protections to same-sex spouses as they do to different-sex spouses. For example, a New York employer with an ERISA-governed employee benefit plan does not have to provide coverage to a same-sex spouse, though they could do so voluntarily, while a New York employer with a state-governed employee benefit plan would be required to provide coverage to same-sex spouses.

As a result of the conflict between DOMA and New York state law, the impact of the Act on employee benefit plans will depend on the type of plan an employer has, and its specific provisions. It is important for all New York employers to review their employee benefit plans to determine how they define "spouse", as this definition may determine whether same-sex spouses are included in coverage, even if that was not the employer's intention.

This Alert is one in a series on the topic of ERISA and employee benefits. To read past alerts, please [click here](#). For more information on this Alert or other ERISA matters, please contact:

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