

Employment Alert

January 31, 2011

Illinois Extends Employment Benefits to Partners in a Civil Union

Today, January 31, Governor Quinn signed the Illinois Religious Freedom Protection and Civil Union Act, which for the first time extends parties to a civil union in the state of Illinois the same benefits, protections, obligations, and responsibilities that have long been afforded to married couples. The statute will require Illinois employers to provide benefits to partners in a civil union that are equal to those provided to the spouses of married employees.

This means that, effective July 1, 2011, employers with insured benefit plans must extend health and other insurance benefits to a partner in a civil union the same as any benefit extended to the spouse of an employee. Self-funded benefit plans, on the other hand, are excluded from these requirements by the Employee Retirement Income Security Act (ERISA) and the Defense of Marriage Act. Due to these statutes' federal preemption of state laws, employers may continue to limit self-funded ERISA benefits to only spouses by marriage. Further, because federal tax law does not recognize civil unions, civil union partner benefits are taxable income to an employee, unlike spousal benefits.

Illinois is now the 11th state to recognize same-sex unions in some form. Illinois previously protected gay, lesbian, bisexual, and transgender rights in the workplace with the 2006 amendment of the Illinois Human Rights Act prohibiting employment discrimination based on sexual orientation. However, the Civil Union Act does not limit civil unions to just same-sex partners; opposite-sex partners may also enter into a civil union, and may become more frequent users of the Act's privileges. For example, since France enacted civil unions in 2009, the overwhelming majority of civil unions have been between straight couples. The Civil Union Act puts certain limitations on civil unions, including that individuals entering civil unions must be over age 18, may not currently be in a marriage or other civil union, and cannot enter into a civil union with a parent, sibling, aunt, uncle or first cousin.

Employers concerned about the financial impact of this legislation may be reassured to note that a 2005 Hewitt Associates study found that the majority of employers offering domestic partner benefits experienced a minimal increase of less than 1 percent of total benefit costs, and only 5 percent experienced financial impacts of 3 percent or greater. This statute will not significantly change the benefit structure for the many employers that already offer domestic partner benefits. However, those employers will need to confirm that their insured plans are updated and do not require proof of a partnership that is more onerous than the civil union certificate which the Illinois Department of Public Health will develop.

Please contact Joe Tilson, Rachel Urquhart, or any MBT labor and employment lawyer with questions about this new law.

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