



For your information

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State Update: Same-Sex Marriage

In recent months, legislatures in Maryland, New Jersey, and Washington voted to legalize same-sex marriage. However, New Jersey's governor vetoed the state's same-sex marriage legislation. Also, the Ninth Circuit upheld a lower court's decision that Proposition 8, a California law prohibiting same-sex marriage, violates the U.S. Constitution.

Background

The Defense of Marriage Act of 1996 (DOMA) expressly limits the federal definition of marriage to relationships between one man and one woman and prohibits legally married same-sex couples from receiving federal benefits. Following enactment of DOMA, a number of states amended their laws to provide for a similar definition of marriage. In addition, some states expressly prohibit same-sex unions.

Before 2012, six states (New York, Massachusetts, Connecticut, Vermont, New Hampshire, and Iowa) and the District of Columbia recognized same-sex marriage. Already in 2012, there has been significant activity at the state level relating to defining marriage, and additional state action is expected this year.

State Update

In recent months, there have been new developments relating to same-sex marriage in Maryland, New Jersey, Washington, and California.

Maryland

On March 1, 2012, Governor Martin O'Malley (D) signed into law the [Civil Marriage Protection Act of 2012](#) (CMPA). Maryland was the eighth state to legalize same-sex marriage.

The CMPA amends Maryland family law to provide that marriage between "two individuals who are not otherwise prohibited from marrying" is valid in Maryland. The new law is effective beginning January 1, 2013.

INSIGHT

Previously, the legislation's effective date was October 1, 2012. Opponents of the CMPA vowed to petition for a referendum that would call for repealing the new law before it takes effect on January 1, 2013.

COMPLIANCE ALERT: Employers in Maryland will want to begin preparing for the CMPA's January 1, 2013 effective date while realizing that Maryland voters could repeal the law in November 2012.

New Jersey

On February 17, 2012, Governor Chris Christie (R) [vetoed](#) the [Marriage Equality and Religious Exemption Act](#) (MERE). The MERE provided that marriage means the "legally recognized union of two consenting persons in a committed relationship." The legislation would have eliminated civil unions and allowed same-sex couples to marry in New Jersey.

INSIGHT

Governor Christie stated that he supports allowing New Jersey voters to decide by referendum whether same-sex couples should marry. Notably, no state has ever legalized same-sex marriage by a state referendum.

COMPLIANCE ALERT: Employers in New Jersey still must comply with New Jersey's civil union law, which provides same-sex couples in a civil union all the statutory rights, benefits, and obligations afforded to married couples.

Washington

On February 13, 2012, Governor Christine Gregoire (D) signed into law [Senate Bill 6239](#) (SB 6239), which legalizes same-sex marriage. Washington was the seventh state to legalize same-sex marriage. The new law, effective on June 7, 2012, provides that marriage in Washington "is a civil contract between two persons."

INSIGHT

Opponents are trying to challenge this law through the referendum process. If the issue is put to a referendum in November 2012, the law's effective date would be suspended. In addition, opponents want voters to vote on an initiative to define marriage as between a man and a woman.

COMPLIANCE ALERT: Employers will likely want to begin to work to comply with SB 6239, even though it is possible that the law will be either put on hold or repealed.

California

On February 7, 2012, a three-judge panel of the United States Court of Appeals for the Ninth Circuit [upheld](#) a California district court's decision that California's Proposition 8, a 2008 California ballot measure that limited marriage to one man and one woman, violates the Fourteenth Amendment to the United States Constitution. The Court noted that, under California law, same-sex couples enjoy the same rights as opposite-sex couples, regardless of marital status. Although supporters of Proposition 8 had different appellate routes available to them, on February 21, 2012, they opted to appeal to the full Ninth Circuit.

INSIGHT

The Ninth Circuit noted that it was not deciding the broader issue of whether, under the United States Constitution, same-sex couples may ever be denied the right to marry.

COMPLIANCE ALERT: Employers do not need to respond immediately to the Ninth Circuit ruling because it is not in effect while proponents of Proposition 8 appeal it.

Conclusion

Additional activity relating to same-sex marriage is expected in other states. New Hampshire lawmakers may vote to repeal the state's same-sex marriage law. In addition, in November, Maine voters will be asked to vote on a ballot initiative to make same-sex marriage legal. Employers will need to stay up to date on how a state defines marriage (and even non-marriage relationships [e.g., civil unions, domestic partnerships] that are protected under state law) and the effective dates of any new state laws.

Buck Can Help

- Update personnel policies
- Review and, if needed, update state payroll policies with respect to same-sex spouses
- Monitor and help ensure compliance with state same-sex marriage legislation and referenda

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.
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