

Colorado Governor Signs Civil Unions Into Law - How Will the Law Impact Your Employee Benefit Plans?

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by Rebecca Hudson

On March 21, 2013, Governor John Hickenlooper signed Senate Bill 11 in an historic ceremony at the History Colorado Center near the state Capitol. The law, which will take effect May 1, means that Colorado will join eight other states that permit civil unions or have similar laws that recognize civil unions. Nine other states and the District of Columbia allow same-sex marriage.

Under the new Colorado Civil Union Act (Colorado Rev. Stat. 14-15-101 et seq.), Colorado will recognize civil unions entered into by same-sex and opposite-sex couples, granting rights afforded to traditionally married couples, such as enhanced inheritance and parental rights, workers compensation survivor benefits, anti-discrimination protection, state family leave benefits and unemployment benefits. People in civil unions also will have the ability to make medical decisions for their partners.

A civil union, however, is not a marriage, which means a civil union does not provide federal protections or responsibilities to couples who enter into one. For example, under the Federal Defense of Marriage Act ("DOMA") federal programs define marriage as "between one man and one woman." DOMA will not recognize the Colorado Civil Union Act, and will only consider a spouse to be a person of the opposite sex who is a husband or wife. Accordingly, employment benefits offered by Colorado employers that remain governed by federal law will not recognize a civil union between members of the same sex. This article briefly touches on some of the benefits that Colorado employers must consider under state and federal law.

Group Health Insurance Benefits

Colorado health plans "issued, delivered, or renewed or after January 1, 2014" will be required to treat a partner in a civil union and a marriage the same. This means that if a Colorado employer offers health insurance to the spouse of an employee, the employer must also offer health insurance for the partner in a civil union. A plan is governed by Colorado law if the insured health plan or insurance contract was issued in Colorado. If a group health plan is self-insured, it will not be governed by state law and

will instead be governed by federal law, primarily the Employee Retiree Income Security Act of 1974 ("ERISA"). Under ERISA, an employer is not required to extend coverage to a civil union partner.

In addition, Colorado employers are not required to offer civil union partners continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") because COBRA is governed by federal law. After January 1, 2014, however, civil union partners will be able to receive continuation coverage under the Colorado State Continuation/Conversion provisions.

Because federal law does not currently recognize civil unions, an employee who elects group health coverage for a civil union partner must pay for those benefits on an after-tax basis. To the extent the employee's employer subsidizes premiums paid for coverage for a same-sex partner, the employee will have imputed income equal to the value of that subsidy. The imputed income is subject to federal income tax.

Retirement Benefits

Under a Colorado public retirement system, civil union partners will now be entitled to any survivor benefits provided to spouses under public sector pension plans. For example, a civil union employee may now designate his or her partner as a beneficiary under the employee's state public employees' retirement system. Similarly, the civil union partner of a firefighter or a police officer will be eligible for survivor benefits under a local government firefighter and police pension plan.

Next Steps

Below are several action items Colorado employers should consider to comply with the Colorado Civil Union Act:

- Determine if state law applies to any employee benefit plan.
- Amend any plan governed by Colorado law that provides for spousal coverage to include civil union partners. Update enrollment and beneficiary forms.
- If a group health plan must cover civil union partners, contact the plan's insurer(s) to incorporate and approve the Colorado State Continuation/Conversion provisions to all plan participants.
- Confirm proper tax treatment of benefits provided to civil union partners under the federal tax code.
- Review public pension benefits and ensure that the benefits are payable to both married and civil union partners who qualify.

For additional questions about the Colorado Civil Union Act and its impact on employee benefits, contact a member of Holland & Hart's Benefits Law Group.

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