

## Benefits Update



# The Impact Of New York's Marriage Equality Act On Employee Benefits Plans

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This past summer, New York passed its Marriage Equality Act, which generally provides that same-sex couples can legally marry in New York, and that same-sex married couples are to be treated the same as opposite-sex married couples under New York laws. We're reporting on it here because many believe that this law may be a harbinger of what other states may soon consider. Such laws create potential problems for benefits administrators.

### What Is Affected

Employers with New York state income tax withholding and reporting obligations need to review the impact of this law on their benefit plans and work with their payroll personnel or administrator to ensure proper state income tax withholding for benefits provided to same-sex spouses of New York employees. Note that several other states now recognize same-sex marriages, domestic partnerships and civil unions, so while this article focuses on New York employees, the state income tax treatment could also apply to employees in other states.

States' recognition of same-sex couples can cause significant payroll issues for employers because these states' tax laws now differ from federal tax laws. The federal Defense of Marriage Act (DOMA) specifically bars federal recognition of same-sex marriages and civil unions. DOMA's restriction means that any employee benefits that rely on the federal definition of "spouse" for purposes of what is exempt from taxable income to an employee (such as Section 125 cafeteria plans' pre-tax payment of premiums, flexible spending accounts (FSAs), health savings accounts (HSAs), health reimbursement accounts (HRAs), employer contributions to benefit premiums, etc.) apply only to married couples of the opposite sex for federal income tax purposes.

Consequently, the Marriage Equality Act causes New York state tax law to differ from federal tax law. For example, under New York state tax law, an employee with a covered same-sex spouse will receive tax-favored treatment from New York with respect to the health coverage of the spouse, but

under federal tax law, the same-sex spouse would not receive tax-favored treatment on the basis of marriage unless the same-sex spouse is an employee's tax dependent ("qualifying relative") under section 152 of the Internal Revenue Code.

### **Action Needed?**

If your operations are solely within a state that has adopted a state DOMA law, you have no legal obligation to provide benefits to same-sex spouses/partners, though you may need to do so to remain an employer of choice. If you have employees in several states, we suggest you evaluate your benefit plans to make sure they comply with each applicable state's laws regarding same sex couples.

At the very least, employers should contact their payroll personnel and administrators to confirm that New York state taxes are being properly withheld and reported. Information on New York state income tax withholding and reporting is available from the New York State Department of Tax and Finance.

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