

California Supreme Court's Authorization of Same-Sex Marriages Will Affect Some Employer-Provided Benefits

The California Supreme Court's recent ruling in *In re Marriage Cases* that California cannot constitutionally limit the definition of "marriage" to a union between a man and a woman opens the way to same-sex marriages in California and could affect some of the benefits that employers offer to their California employees. Moreover, the decision will take effect on Saturday, June 14 (although some county clerk's offices will not be open to issue marriage licenses until Monday, June 16), unless the Court extends that time, which it has the option to do for up to an additional 30 days to determine whether to grant the petition for rehearing already filed by opponents of the decision.

Given the potentially very short time until implementation, California employers, as well as multi-state employers with a California presence, should review their benefit programs promptly to assess the possible effects of the new ruling, but may wish to proceed cautiously with amendments since there is already a referendum initiative underway that, if validated and passed, would amend the California constitution and reverse the Court's decision.

Impact on Benefits

The decision's impact on employer-sponsored pension plans will be limited by the federal Defense of Marriage Act and by ERISA's preemption provisions. The impact on other employee benefit plans depends largely on whether the plans are insured. ERISA will likely preempt state-mandated coverage (including for same-sex spouses) under self-insured health and welfare plans. In the case of plans not self-insured, ERISA preemption will not apply if California's new definition of marriage is construed to be a matter of state insurance law—a question that has yet to be tested. Where employers choose, or are obligated, to provide benefits to same-sex spouses, consideration should be given to the federal tax treatment of those benefits.

Offering Same-Sex Domestic Partner Benefits

It remains to be seen what, if any, impact *In re Marriage Cases* will have on California laws related to benefits for domestic partners. In the event that there is no change in those laws, employers who provide domestic-partner benefits to allow a California employee in a same-sex relationship access to employee benefits that, prior to this Court decision, would otherwise only have been available to heterosexual married employees, will have several options to consider. These options include whether to continue to provide these benefits only to same-sex couples (even though the rationale for doing so for employees residing in California will have been removed by this decision), expand them to include opposite-sex couples (so that all couples who choose not to marry, regardless of the reason, are treated equally), or eliminate them entirely (as no longer necessary for access once marriage is available to same-sex couples).

Ask Ropes & Gray

Ropes & Gray has extensive experience assisting employers in thinking through these issues in light of the work we have done for our clients affected by *Goodridge v. Department of Public Health*, the 2004 Massachusetts Supreme Judicial Court's decision that granted same-sex couples the right to marry in Massachusetts. For an analysis of the California decision's potential impact on your employee benefits, please contact any member of our [Tax and Benefits Department](#) or [Benefits Consulting Group](#).

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