

CLIENT ALERT

Employment & Labor

January 2007

Volume VIII No. 9

New Jersey Civil Union Law Will Impact Employers

On December 21, 2006, New Jersey Governor Jon Corzine signed civil union legislation that will go into effect on February 19, 2007. The new law will guarantee same-sex couples the same rights and benefits as those enjoyed by married heterosexual couples. The legislature passed the law in response to the State Supreme Court's October 2006 decision in *Lewis v. Harris*, in which the Court concluded that the equal protection clause of the New Jersey Constitution entitles committed same-sex couples to the same rights and benefits as their heterosexual counterparts. The Court held that the State must either permit same-sex couples to marry under existing marriage statutes or enact parallel legislation that would provide them with the same rights and benefits. The legislature chose the latter. As the effective date of the legislation draws near, employers must make sure that they are ready for its arrival.

The Law

The new law sets forth the administrative details involved in entering into a civil union. These details, such as what fees must be paid, who may perform the ceremony, and the length of the waiting period, are the same as those for entering into a marriage.

Once individuals enter into a civil union, the law states unequivocally that they "shall receive the same benefits and protections and be subject to the same responsibilities as spouses in a marriage." The law sets forth a non-inclusive list of legal benefits and protections that parties to a civil union will be entitled to enjoy to the same extent as

married spouses. The items that will be of particular interest to employers are: "laws relating to insurance, health and pension benefits," "prohibitions against discrimination based upon marital status," "workers' compensation benefits," and "family leave benefits [under state law]."

The LAD

The New Jersey Law Against Discrimination ("LAD") currently bars an employer from discriminating against an employee on the basis of such characteristics as, among other things, "race, creed, color, national origin, ancestry, age, marital status, [and] domestic partnership status." As of the effective date of the civil union law, the LAD will also expressly prohibit discrimination based upon "civil union status."

Family Leave

Under the New Jersey Family Leave Act ("FLA"), an eligible employee may take up to twelve weeks of leave within a twenty-four month period to care for a "family member" who is suffering from a "serious health condition." The term "family member" is currently defined as a "child, parent, or spouse." When the civil union law takes effect, the definition will also include a "civil union partner."

Benefits

The new law will generally require employers that offer health and life insurance benefits to spouses to offer the same benefits to civil union partners. The federal Employee Retirement Income Security Act ("ERISA"), however, which governs many employee benefit plans, does not recognize civil unions and preempts inconsistent state laws. It is not clear how courts will treat conflicting employer obligations under state and federal law in

this area, and employers facing potential issues should consult counsel regarding how best to minimize their risk.

In the area of Workers' Compensation benefits, the civil union law will require that survivors' benefits and the payment of back wages traditionally available to spouses be available under the same circumstances to civil union partners.

The Domestic Partnership Act

On January 12, 2004, New Jersey enacted the Domestic Partnership Act ("DPA"), which guaranteed certain rights and benefits to non-married couples, including same-sex couples. The civil union law provides that the State will no longer register same-sex domestic partnerships. The civil union law will not, however, alter the rights and obligations of parties to existing domestic partnership relationships. Moreover, such individuals will now have the opportunity to enter into civil unions, which will entitle them to more rights and benefits than were provided under the DPA.

Meanwhile, a commission created under the civil union law to monitor its effectiveness and determine whether additional protections are

needed, is expressly charged with the responsibility of reviewing the DPA and determining whether it should be repealed.

Future Laws

The civil union law contains a provision intended to ensure that all future New Jersey laws apply equally to individuals who are parties to a marriage or civil union. The provision states that "[w]henver in any law, rule, regulation, judicial or administrative proceeding or otherwise, reference is made to 'marriage,' 'husband,' 'wife,' 'spouse,' 'family,' 'immediate family,' 'dependent,' 'next of kin,' 'widow,' 'widower,' 'widowed' or another word which in a specific context denotes a marital or spousal relationship, the same shall include a civil union pursuant to the provisions of this act."

Federal Law

Under the U.S. Defense of Marriage Act, a "spouse" is a person of the opposite sex who is a husband or wife. Federal law does not recognize same-sex marriages and federal laws do not provide special protection to people because they are parties to a civil union. Therefore, for instance, an employee is not entitled to leave

under the federal Family and Medical Leave Act to care for a civil union partner (although, as noted, the FLA will provide him or her similar protection).

Conclusion

New Jersey employers who have not already done so should begin preparing for the changes that the new civil union law will bring. The first step should be to review all personnel policies and benefit plans that are governed by state law, and make any changes necessary to ensure that parties to a civil union are treated the same as married spouses. Thus, for instance, employers that offer bereavement leave for the death of a spouse should ensure that the same benefit is provided for the death of a civil union partner. Likewise, family and medical leave policies should be revised to comply with the changes to the New Jersey Family Leave Act. In addition, employee policies prohibiting discrimination on the basis of various protected characteristics should be supplemented to include discrimination on the basis of civil union status. Employee training programs should also be updated to include this new protection.

We send these Alerts to our clients and friends to provide information on recent developments in the law. The Alerts, however, should not be relied on for legal advice in any particular matter.

LAD Protection Extended To "Gender Identity Or Expression"

In addition to enacting the new civil union law, New Jersey has enacted a separate law amending the LAD to prohibit employment discrimination on the basis of "gender identity or expression." The term "gender identity or expression" means "having or being perceived as having a gender related identity or expression whether or not stereotypically associated with a person's assigned sex at birth," and includes "transgender status."

The amendment states that nothing in the LAD shall "affect the ability of an employer to require employees to adhere to reasonable workplace appearance, grooming and dress standards not precluded by other provisions of State or federal law," but expressly requires employers to "allow an employee to appear, groom and dress consistent with the employee's gender identity or expression." These changes to the LAD take effect on June 17, 2007. Before that time, employers should make appropriate changes to their policies and training programs.

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