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DOMESTIC PARTNERSHIP BENEFITS STILL MATTER IN THE AGE OF EQUAL MARRIAGE:

Marriage Does Not Mean Instant Equality for Lesbian and Gay Employees

Employers all across Massachusetts, Connecticut, Vermont and New Hampshire offer domestic partnership benefits to unmarried same-sex couples. Those policies were instituted in the spirit of fairness in order to provide “equal pay for equal work.” Even though these states may no longer deny marriage to same-sex couples, domestic partnership benefits remain important. There is no reason to terminate domestic partnership policies immediately and a number of good reasons exist to maintain them for the foreseeable future. Without careful thought, employers could inadvertently harm their employees’ families and children.

Same-sex couples and heterosexual couples are not on a level playing field with regard to marriage.

The right to marry is very helpful to many same-sex couples, but it is a mistake to think that it means all employees are now in the same position. They are not. Same-sex couples who marry still face discrimination and legal complications that non-gay married employees don’t. There is no federal law disrespecting the marriages of heterosexual couples (as there is with same-sex couples), let alone state laws “voiding” the marriages of non-gay couples. The legal complications and uneven respect for marriages of same-sex couples may mean that the right choice for some people is to NOT marry.

Legal reasons why some same-sex couples might not be able to marry:

- A same-sex couple who marries cannot adopt a child internationally.
- A bi-national same-sex couple cannot marry for fear that the non-citizen partner would be exposed to U.S. immigration officials and deported.

Heterosexual couples do not face these risks.

Marrying a same-sex partner could put an employee’s or his or her partner’s ongoing job prospects in jeopardy.

It is still legal to discriminate based on sexual orientation in 29 states and there is no federal employment discrimination protection based on sexual orientation. If an individual needs to change job locations or transfer within a company, or even contemplates moving from Massachusetts, Connecticut, Vermont or New Hampshire some day for new opportunities, being married to a same-sex partner can “out” them as gay or lesbian, jeopardizing their job and career path.

Legal uncertainty makes marriage unattractive to some same-sex couples; employees should not be penalized for exercising caution.

A marriage is a marriage, but marriages of same-sex couples face official discrimination in many areas, complicating their situation and deterring some from marrying. For example, the federal government denies all 1138 federal rights of marriage to same-sex couples. Some couples may be unable to navigate the bizarre legal situation of being married, but not in the eyes of the federal government. Others might want to take a wait and see attitude. In addition, many states are on record saying they will not respect a marriage of a same-sex couple. An employee may justly feel like these issues need to be addressed before marriage will really protect his or her family.

Insurance protection may not be portable from one job to the next, leaving a family worse off due to the sacrifices or negative legal consequences of marriage for same-sex couples.

Making health insurance for an employee's family hinge on marriage places undue pressure on the couple to marry. Some couples may think the health insurance is worth the sacrifices described above, as part and parcel of marriage for same-sex couples. However, the benefit of the bargain could be stripped away if their next employer refuses to extend health insurance or other benefits to same-sex married couples. (Many management attorneys are advising self-insured employers to revise their plans to purposely exclude married same-sex spouses.) This would leave the employee's family worse off, rather than better protected.

**Until there is more respect for marriages of same-sex couples as marriages, employers need to understand that marriage can be risky business for same-sex couples.
Forcing same-sex couples to marry for health insurance
may have unintended negative consequences.**

Based upon the mistaken belief that gays and lesbians can now marry on the same terms as everyone else, some employers are terminating their domestic partnership policies. In many cases, these policies provide the sole mechanism for employees to obtain health insurance coverage for their long-term partners.

PLEASE RECONSIDER. Forcing employees to marry in order to get health insurance for their families will put many employees in an untenable predicament. Any employer who cares about providing "equal pay for equal work" and who does not want to add to the discriminatory hardships faced by their employees should continue to offer domestic partnership benefits.

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