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SAME-SEX MARRIAGE: EMBRACING THE NEW REALITY

by Jamie Dokovna and Michael Gongora, Daily Business Review

With same-sex marriages now taking place throughout Florida, many employers will soon learn how it will affect their businesses and their bottom line.

According to recent statistics, approximately 24,248 gay couples are expected to marry in the next three years.

Many cities and counties in Florida, including Miami-Dade, Broward, Palm Beach, Tampa, West Palm Beach, Orange, Monroe, Key West, Miami Beach and Gainesville, among others, have prohibited sexual orientation discrimination or gender identity/expression discrimination in both the workplace and housing for years.

This recent ruling, however, has provided additional pro-



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tections for the gay, lesbian, bisexual and transgender community, but its effect may have some unintended consequences.

For example, for those individuals whose sexual orientation was previously unknown to their employer, how will they be affected by seeking benefits on behalf of their same-sex partner? Will those employees be subjected to

harassment, discrimination or bullying? Will employers change policies or no longer offer certain benefits to all employees so that they do not have to offer benefits to employees in same-sex marriages?

For most employers, the answers are probably "no." However, with employers such as Hobby Lobby and the recent ruling permitting it to deny insurance cov-

erage for contraception under the Affordable Care Act, the answers are not so clear.

While this recent ruling is an important victory for the LGBT community, Florida has yet to amend its Civil Rights Act to include sexual orientation and gender identity/expression as protected classes. Likewise, the federal antidiscrimination laws do not include

either sexual orientation or gender identity/ expression as protected groups, but it appears in spite of these laws, change is occurring.

BENEFITS AND POLICIES

In 2013, the U.S. Supreme Court struck down a portion of the Defense of Marriage Act, thus requiring the federal government to recognize same-sex marriages in states where such marriages were legal.

As such, with the legalization of same-sex marriages in Florida, the federal government must recognize Florida same-sex marriages for purposes of Social Security benefits, taxes, Medicare, U.S. visas for same-sex spouses, and benefits for members of the military and federal government workers. Another tangible sign of this change is the announcement that state employees in same-sex marriages are now eligible for health insurance and retirement benefits.

With Florida making this acknowledgment, private businesses and nonprofit corporations will also need to reassess their current ben-

efits and policies which may not have been previously available to same-sex couples or domestic partners.

For most of these employers, the recognition of same-sex marriages in Florida will likely include only a marginal increase in paperwork for taxes and benefits and a review and possible update of their leave and benefits policies. For others, it may mean an increase in discrimination or harassment claims.

Regardless of the impact, all employers should review their current policies and procedures to ensure compliance with the law, including reviewing and updating employee handbooks, benefit descriptions, tax filings and ensuring that LGBT employees have the same health insurance, leave and retirement benefits as other employees. Management should also be trained in addressing harassment and discrimination that may arise as a result of these changes.

While we wait for the U.S. Supreme Court to make a final ruling on same-sex marriage throughout the

country, now is a good time for Florida businesses to get ahead like many Fortune 500 and Fortune 100 companies.

In fact, according to the Human Rights Campaign, 62 percent of Fortune 500 companies offer domestic partner health insurance benefits; 87 percent have nondiscrimination policies based on sexual orientation; and 46 percent have nondiscrimination policies that include gender identity or gender expression.

Ninety-four percent of Fortune 100 companies have antidiscrimination policies based on sexual orientation and 64 percent have antidiscrimination policies based on gender identity or gender expression.

MAKE A CHECKLIST

Since Florida is the 36th state to allow same-sex marriages, employers in the state can look to these business and states such as New York and California for guidance in crafting and implementing these antidiscriminatory policies in the coming year.

Businesses should work with management and human resource professionals to create a checklist of items that

need to be addressed starting with the completion of any necessary tax forms, updating of personnel information, ensuring that benefits are offered to affected employees and their families, including health, dental, vision, life insurance, and retirement benefits, and that the corresponding benefits paperwork is completed.

Employee handbooks should be reviewed to ensure that policies are current and comply with the law.

Meetings should be held with management to ensure that they are aware of the changes and that they are properly trained to handle the issues that may arise as a result of these changes.

Now is the time for business leaders to embrace the new reality to ensure that your business is ready for what lies ahead in 2015 and beyond.

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