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PUBLIC ACT 05-10, AN ACT CONCERNING CIVIL UNIONS

The State of Connecticut recently enacted legislation allowing civil unions for same-sex couples. Public Act 05-10 calls for individuals who enter into civil unions to receive benefits identical to those of married couples under Connecticut law. These benefits include, but are not exclusive to, family and medical leave, workers' compensation, pensions and group insurance for employees in plans not regulated exclusively by federal law. All branches of the state government are now obligated to provide benefits for their employees' civil union partners. Any private sector employer with benefit plans that are governed by state regulations are also obligated to extend health coverage to their employees' civil union partners. Those benefit plans governed by the federal Employee Retirement Income Security Act, or ERISA, are not subject to Public Act 05-10.

Most small and medium-sized companies are fully-insured which, in essence, means that their insurance plans must comply with state regulations. These companies can now expect to offer benefits for civil union partners. Large companies, on the other hand, are often self-insured. The state has no authority over self-insured companies. These companies need only to comply with ERISA guidelines and are not bound by state insurance regulations.

At this time there is still uncertainty over whether ERISA will override state law. If it is determined that ERISA cannot pre-empt state anti-discrimination laws then federally regulated plans have the possibility of providing benefits to civil union partners. The conflicting regulations will in all likelihood be resolved through the courts.

Retirement plans such as 401(k)s and defined-benefit pensions are regulated by federal law and thus do not automatically provide the same protections to civil union couples as they do for married couples. Civil union couples must designate their partner as the beneficiary of their plan in order to receive the benefits in the event of the death of the partner.

Another difference in benefits facing civil union couples extends to continuing medical insurance coverage for persons who lose their jobs. The Consolidated Omnibus Budget Reconciliation Act, or COBRA, is a federally regulated program responsible for continuing medical insurance coverage and thus does not cover civil union partners.

There is a great deal of ambiguity surrounding family and medical leave. State law allows for 16 weeks of leave over a rolling 24 month period. The federal government also allows 12 weeks of leave over one year's time as stated in the Family and Medical Leave Act. Currently, companies in the state of Connecticut allow for the 16 weeks of leave in order to fulfill both state and federal regulations concurrently.

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Civil union couples, theoretically, have a loophole that allows them to take state leave without taking federal. A possible scenario is as follows; a person involved in a civil union takes 16 weeks of leave to care for their partner. In this sense the state law regarding family and medical leave has been exhausted. After returning to work the employee then takes 12 weeks to care for a sick family member. The 12 weeks may be taken because the federal FMLA has not been fulfilled. This appears possible due to the federal Defense of Marriage Act which defines a "spouse" as a person of the opposite sex and thus does not acknowledge time off taken to care for a civil union partner. This scenario is highly unlikely but nonetheless possible at this time.

Employees joined in civil unions must also pay federal income taxes on benefits for their partners. They will not be subject to state income taxes on any benefits. This differs from married couples who pay neither federal nor state taxes on any benefits.

There are many ambiguities and gray areas of the law created by Public Act 05-10. The only resolution for these questions rests in the hands of the courts.

For further information on this case or any other employment related question, please contact Christopher L. Brigham as listed below.

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