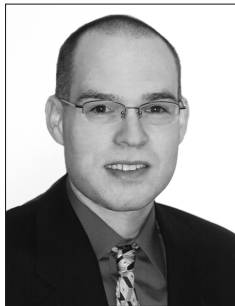


Domestic Partner Benefits

New York State Same-sex Spousal Benefits Buttressed by Government Policy, Case Law

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Legal developments in the state of New York over the past year signal an increasing move toward recognition by that state of same-sex couples married elsewhere.

New York is now in the unique position of having established both case law precedent and official policy recognizing the legal rights and obligations attendant to same-sex marriages despite not having legalized same-sex marriage itself.

History of Recognition of Same-sex Marriage in New York

The New York state comptroller's office began recognizing same-sex marriages from other jurisdictions as early as 2004 (for state employee pension fund participants). The state Civil Service Commission did the same in 2007 relative to benefits programs it oversees for state employees. A 2008 court decision created state-wide precedent for such recognition. On Feb. 1, 2008, in *Martinez v. Monroe Community College* (see *Finding out More*), a New York state court held that recognition of a same-sex marriage performed outside of New York is not against public policy, even though same-sex marriag-

es cannot be performed in that state. Having found the same-sex marriage to be valid, the court went on to hold that the employer's decision to deny the plaintiff's application for spousal health care insurance benefits violated New York discrimination laws that forbid an employer from discriminating against an employee because of the employee's sexual orientation. The defendant appealed, and on May 6, 2008, the New York Court of Appeals (the state's highest court) declined to hear the appeal.

Recent Developments

Citing the *Martinez* decision, on May 14, 2008, Gov. David Paterson (D) directed all state agencies to revise their policies and regulations to recognize same-sex marriages validly performed in other jurisdictions (see *Finding out More*). Throughout the latter half of 2008, various state agencies have reviewed and revised their processes to conform to the governor's directive.

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In November 2008, the New York state insurance superintendent issued a bulletin requiring all companies writing insurance policies in the state to treat same-sex married couples like opposite-sex couples for purposes of writing insurance policies (including health, life and property insurance). In December, the state Department of Health announced that birth certificates for the children of same-sex married couples will automatically list

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both parents. Among all agencies, the increasing benefits available to same-sex spouses in New York state include:

- workers' compensation benefits if a same-sex spouse is killed on the job;
- same-sex spousal benefits available from the Crime Victim's Board;
- same-sex spousal control of public cemetery plots;
- sales tax exemptions (such as for the transfers of cars between spouses) apply to same-sex married couples;
- a same-sex spouse can appear in Tax Department proceedings on behalf of a spouse;
- a same-sex spouse can now challenge the involuntary commitment of a spouse to a psychiatric hospital;
- same-sex spousal involvement in surrogate decision-making for mentally ill patients;
- same-sex spousal hunting and fishing rights;
- homemakers who lose the support of a same-sex spouse are eligible for job training and placement;
- same-sex spouses who move to follow a transferred spouse are eligible for unemployment benefits; and
- rights to rooming quarters for married same-sex minimum-wage workers.

New York State of Mind Going National?

Kirsten Gillibrand (D), the former New York member of the House of Representative Gov. Paterson (D) recently appointed to the Senate seat Hillary Clinton vacated, may prove to be a champion for same-sex marriage on the national scene. As a member of the House of Representatives she voted against legislation to grant same-sex partners of U.S. citizens and permanent residents the same immigration status of married couples and opposed legislation to permit state Medicaid programs to cover low-income, HIV-positive Americans before they develop AIDS. Nonetheless, on the morning of her appointment to the Senate, she expressed to the Empire State Pride Agenda her full support for same-sex marriage and purportedly vowed to support a repeal of the Defense of Marriage Act and the armed forces' "don't ask, don't tell" policy. 🏠

These benefits are outlined in a booklet made available on Jan. 26, 2009 by four LGBT (lesbian, gay, bisexual and transgender) advocacy groups (see *Finding out More*).

Judicial Support

The New York state administrative decisions and actions described above have been bolstered by New York state court rulings. In *Golden v. Paterson* (see *Finding out More*), the governor's May 14, 2008 directive was upheld by a state trial court. In *Godfrey v. Spano* (see *Finding out More*), on Dec. 30, 2008, a New York appellate court dismissed a challenge to a Westchester County, New York, Executive Order directing county departments, boards, agencies and commissions to recognize valid same-sex marriages relative to extending and administering rights and benefits belonging to such couples. In *Lewis v. New York State Department of Civil Service* (see *Finding out More*), a New York appellate court upheld a state agency policy to extend health insurance benefits to same-sex spouses of married government employees.

The potential impact of this decision is that even in cases in which there is no will, under New York law, a same-sex spouse as sole distributee may automatically be entitled to an inheritance.

One New York court has further equalized same-sex inheritance rights as well. On Jan. 26, 2009, in *Matter of the Estate of H. Kenneth Ranfile* (see *Finding out More*), a New York Surrogate Court (a specialized court that handles probate and estate proceedings in the state of New York), cited the *Martinez* decision in holding that a same-sex spouse should be designated as a surviving spouse and sole distributee (as would an opposite-sex spouse under the same circumstances) and therefore be entitled to an inheritance under a decedent's will. The court's decision meant that no formal notification of the court's settlement of the estate needed to be provided to the decedent's surviving siblings. The potential impact of this decision is that even in cases in which there is no will, under New York law, a same-sex spouse as sole distributee may automatically be entitled to inherit.

Administration of New York Benefits Not-yet Clear Cut

Application of many of the new administrative regimes is not yet as simple as applying the same rules to same-sex and opposite-sex couples' benefits. This is most apparent in the insurance and state income tax areas. Under the New York state insurance regime described above, while all fully-insured benefit plans that offer spousal coverage must

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recognize a same-sex spouse (if the marriage was performed in a jurisdiction in which such marriages are legal), employer-funded (so-called “self insured”) group health insurance plans that are regulated under ERISA are not affected by the bulletin. Even so, depending on the definition of “spouse” in a self-insured plan (for example, if a health plan defines the term “spouse” as a spouse is recognized under local law) an argument could be made that such spouses would be covered because of the New York rules, irrespective of ERISA.

There are still state and federal tax consequences with respect to health benefits provided to same-sex spouses. Because only opposite-sex partners are recognized as spouses for purposes of federal law, the fair market value of the employer-provided portion of same-sex spouse health coverage has to be treated as income to the employee for federal tax purposes (unless the spouse otherwise qualifies as the employee’s dependent under the Internal Revenue Code). Although the New York Department of Taxation and Finance continues to evaluate the issue of marriage recognition as it pertains to both the tax filing status of married same-sex couples and the tax treatment of employer spousal benefits in light of the governor’s May 14, 2008 directive, because under current New York law the filing status of a couple from the state must be the same as their filing status for federal tax purposes, it appears that same-sex couples could only file jointly if the state were to enact legislation “de-coupling” the filing status provisions of New York tax procedures from IRS standards.

Coordinate New York Coverage

Employers and other sponsors that provide insured benefits under New York insurance policies should make sure such policies provide for same-sex spouse coverage. Employers and other sponsors of self-insured plans should review their plans and communications in order to avoid possible unintended coverage.

Definition of ‘Spouse’

Employers must decide how to define or interpret “spouse” in their benefit plans related to New York employees. If a plan does not define the term, or simply incorporates a state law definition, it should be amended to clarify the definition the employer wishes to use.

The opinion and order in the same-sex marriage recognition case *Martinez v. Monroe Community College*, 850 N.Y.S.2d 740 (4th Dep’t), lv. to appeal denied, 10 N.Y.3d 856 (2008), can be found at: <http://www.courts.state.ny.us/ad4/court/Decisions/2008/02-01-08/PDF/1562.pdf>.

Paterson’s May 14, 2008 directive that state agencies recognize valid same-sex marriages took the form of a memo from David Nocenti, counsel to the governor. A copy can be found at <http://www.abcn.org/pdf/memo.pdf>. Also see the October 2008 newsletter, page 8.


The November insurance bulletin requiring that New York insurance policies provide coverage for couples of valid same-sex marriages was issued by Eric R. Dinallo as Circular Letter No. 27 and can be found at http://www.ins.state.ny.us/circltr/2008/cl08_27.htm.

“Your Government Respects Your Marriage: Developments in New York State Agency Recognition of Same-Sex Couples’ Out of State Marriages” can be found at: http://data.lambdalegal.org/publications/downloads/fs_your-government-respects-your-marriage.pdf.

A copy of the decision in *Golden v. Paterson*, Index No. 260148/2008 (Sup. Ct. N.Y. Cty. Sept. 2, 2008), upholding the New York Governor’s directive on same-sex marriages can be found at http://data.lambdalegal.org/in-court/downloads/golden_ny_20080902_decision-and-order.pdf.

The decision upholding a Westchester County order requiring equal benefits of county workers is *Godfrey v. Spano* (2d Dep’t, December 30, 2008), and can be found at http://data.lambdalegal.org/in-court/downloads/godfrey_ny_20081230_decision-and-order.pdf.

The opinion and order extending health insurance benefits to same-sex spouses of married government employees is *Lewis v. New York State Department of Civil Service* (3d Dep’t, January 2009), which can be found at http://lawprofessors.typepad.com/family_law/files/newyork_samesex_marriage_recognized.pdf.

The New York same-sex inheritance case is *Matter of the Estate of H. Kenneth Ranfile*, File No. 4585-2008 (N.Y.L.J., Feb. 3, 2009). 



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