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Emerging Strategies for Risk

## Respecting Your Benefits Responsibility to LGBT Employees

**The Human Rights Campaign Foundation's Corporate Equality Index raises the bar on workplace equality for LGBT employees and their same-sex partners. Employee benefits managers, take notice.**

**By Todd A. Solomon and Brian J. Tiemann, McDermott Will & Emery LLP**

Diversity has become an important component of success in the market as many major companies now require the companies with which they do business to demonstrate their efforts at not only promoting diversity within the workplace, but also supporting diversity initiatives within their local communities.

The annual Human Rights Campaign (HRC) Foundation's Corporate Equality Index has become a nationally recognized indicator of an employer's commitment to supporting and promoting the lesbian, gay, bisexual and transgender (LGBT) community. In 2010, greater than half of the Fortune 500 companies were included in the index. In addition, 305 of the 590 employers evaluated in 2010 received a perfect 100 percent rating on the index and were recognized by the HRC as one of the "Best Places to Work for LGBT Equality"—a distinction that adds value to the recruiting and marketing efforts of these employers.

Employers that want to achieve or retain high rankings on the HRC Corporate Equality Index may need to take action now to prepare for the new criteria being introduced for the 2012 index.

The Corporate Equality Index evaluates employers on a series of evolving criteria that demonstrate the employer's commitment to equal treatment of all people, regardless of their sexual orientation and gender identity or expression.

The new criteria for the 2012 index will stress comprehensive employee benefits for same-sex spouses and partners, transgender-inclusive medical and short-term disability benefits, organizational competency on LGBT

issues and public engagement with the LGBT community.

The HRC will distribute its survey for the 2012 index to employers in March 2011. Employers must demonstrate that all new criteria other than those impacting employee benefits will be in place by July 29, 2011. All changes to an employer's benefits plans must be effective no later than January 1, 2012. In addition, the HRC requires employers to announce to employees any changes that will be made to the employer's benefits plans to satisfy the criteria for the index prior to the publication of the 2012 index on September 1, 2011.

### COMPREHENSIVE EMPLOYEE BENEFITS

Previously, employers had to offer same-sex partners of employees and their legal dependents medical, dental and vision insurance coverage, as well as COBRA-equivalent continuation coverage, to score highly on the index. In addition, employers had to offer at least three of the following benefits to employees' same-sex partners: FMLA-equivalent leave, bereavement leave, employer-provided supplemental life insurance, relocation/travel assistance, adoption assistance, qualified joint and survivor annuities, qualified preretirement survivor annuities, retiree health-care benefits and employee discounts.

The new criteria will require employers to ensure that all benefits extended to opposite-sex spouses of employees are extended to same-sex partners under the same terms to the extent permitted by law. Same-sex partners will

include all state-registered domestic partners, civil-union partners and same-sex spouses.

Employers with qualified defined-contribution retirement plans will need to review their plans to ensure that same-sex partners are included in any default beneficiary or hardship distribution provisions. Default beneficiary provisions state that employees' benefits will be paid to their spouse in the event that the employee dies without having designated a beneficiary. Plans with such default beneficiary language must be amended to include employees' same-sex spouse or partner as a default beneficiary.

In addition, many defined-contribution plans permit employees to take a hardship distribution from their plan accounts under certain specified circumstances. Plans that offer such hardship distributions must be amended to take same-sex spouses and partners into consideration to the same degree as opposite-sex spouses in determining employee eligibility for the distribution. This change is legally optional under the Pension Protection Act of 2006, but will now be required in order to retain a perfect score on the index.

Most employers' defined-benefit pension plans will also need to be amended to extend qualified joint and preretirement survivor annuities to same-sex spouses and partners. Most pension plans permit employees' benefits to be paid over the span of the employees' life or the joint lives of employees and their opposite-sex spouse. Plans offering benefit payments in the form of a qualified joint and survivor annuity must be amended to offer a joint annuity that is payable over the lives of employees and their same-sex spouse or partner.

Many pension plans also include a qualified preretirement survivor annuity that is payable to spouses in the event that employees die before beginning payment of their pension benefits. Plans offering preretirement survivor annuities will need to be amended to include same-sex partners and spouses as recipient survivors of such annuities.

Employers implementing these changes for the defined-benefit pension plans may want to consider whether the added administrative complexity of tracking employees' same-sex spouses or partners warrants extending joint and preretirement survivor annuities to any nonspouse beneficiary designated by employees. While many employers have opted to implement nonspouse beneficiary annuities, doing so is more expensive than extending such annuities only to same-sex spouses and partners.

**Todd A. Solomon is a partner in the Employee Benefits Department of McDermott Will & Emery's Chicago office. He is the author of the third, fourth and fifth editions of *Domestic Partner Benefits: An Employer's Guide*, and was the co-author of the book's first and second editions. Mr. Solomon can be reached at +1 312 984 7513 or [tsolomon@mwe.com](mailto:tsolomon@mwe.com).**

**Brian J. Tiemann is a member of the Employee Benefits Department in the Chicago office of McDermott Will & Emery. Mr. Tiemann can be reached at +1 312 984 3268 or [btiemann@mwe.com](mailto:btiemann@mwe.com).**

Employers that offer any insured benefits to employees will need to review the contracts with their insurance providers in order to ensure that same-sex spouses are included in the definition of "spouse" under the contract in those states where same-sex marriage is legal or recognized: Connecticut, Iowa, Massachusetts, New Hampshire, Vermont and the District of Columbia. New York will also recognize same-sex marriages formed in any of these jurisdictions even though same-sex couples cannot legally marry in New York.

## **TRANSGENDER AND SHORT-TERM DISABILITY BENEFITS**

Employers previously were able to achieve high ranking on the index by offering benefits covering one of the following categories of treatment for transitioning transgender individuals: counseling by a mental health professional, pharmacy benefits covering hormone therapy, medical visits to monitor the effects of hormone therapy and other associated lab procedures, medically necessary surgical procedures such as hysterectomy and or short-term disability leave for surgical procedures.

The new criteria will require employers to ensure that medical and short-term disability benefits include comprehensive coverage for transgender-specific treatments.

Employers will need to work with their insurance carriers and administrators to remove any existing exclusions for transgender-specific treatment such as "cosmetic" classifications that are not covered by the employers' plan. In addition, employers must affirmatively extend coverage to any medically necessary treatments and procedures. Guidance on the transgender-specific treatments and procedures that should be covered because they are medically necessary is available under the standards of care defined by the World Professional Association for Transgender Health (WPATH).

In addition to making necessary changes to their employee benefits plans to accommodate these new requirements, employers will need to review guidance from the HRC on the other criteria on which they will be evaluated for the 2012 index. Because implementing such changes can often be complex, employers should take action now to ensure that their benefits plans and employment practices and policies are updated in accordance with the new criteria in time for the deadlines imposed under the 2012 index.