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Now School Districts Must Recognize Right of Same Sex Spouse to Employment Benefits

By Robert H. Cohen



Effective May 1, 2007, all school districts that participate within the New York State Health Insurance Plan (“NYSHIP”) must include same sex spouses as eligible for coverage under their Employee Benefits Program. In a dramatic policy shift, the New York State Department of Civil Service changed the NYSHIP rules so that same sex spouses are now deemed eligible for health insurance coverage. Prior to May 1, 2007, same sex spouses were not eligible for benefits under NYSHIP because same sex marriages were not legally sanctioned in New York State.

For purposes of the new rule, a same sex spouse is one whose marriage is legal in the jurisdiction where it was performed. Massachusetts is currently the only state where same sex marriages are legally performed. However, same sex marriages are legal in Canada, Spain, South Africa, the Netherlands and Belgium. Thus, a same sex couple married in Canada but now living in New York is now eligible for spousal employee benefits. A marriage certificate issued from one of the above noted jurisdictions is deemed acceptable proof of marriage.

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In addition to school districts, all branches of state government and all local government participants in NYSHIP are affected by the new rules. Same sex spouses' partners are also recognized beneficiaries of the state sponsored Life Insurance and Dental Insurance Programs.

A taxpayers' action has been brought in the Supreme Court, County of Albany challenging the Civil Service Department's new policy recognizing same sex marriage partners from out of state jurisdictions. *Lewis v. New York State Department of Civil Service*, Index No. 4078/07. The Plaintiffs in *Lewis* are alleging that Civil Service's action violates New York State Finance Law Section 123-b, by causing a wrongful expenditure and unconstitutional disbursement of state funds to a same sex spouse purportedly married outside of the state of New York. Plaintiffs further allege that the new policy recognizing only traditional marriages between members of the opposite sex. Lastly, the Plaintiffs' claim that this change in policy usurps the policymaking function of the State Legislature, thereby violating the separation of powers doctrine of the New York State Constitution.

In a related case, an Albany County judge granted the State Comptroller's decision to extend State Employee Retirement Benefits to same sex couples based upon Canadian marriage licenses. *See, Godfrey v. Hevesi*, Index No. 5896/06. The Plaintiffs in the

Godfrey case have indicated that they plan to appeal the court's decision to the Appellate Division, Third Department. It is likely that this case, as well as the *Lewis* case, will ultimately end up being decided by the Court of Appeals.

Note: The author is a partner in the Melville firm of Lamb & Barnosky, LLP, general, labor and special counsel to numerous school districts and municipalities in the New York metropolitan area.



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