

# Federal laws may keep same-sex partners from sharing health, retirement benefits

**Employer - Businesses should amend workplace policies to address sexual discrimination and changes in benefits, attorneys advise**

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In some respects, Oregon's forthcoming protections for gay and lesbian couples will have the most impact in rural parts of the state, where local discrimination ordinances don't exist.

However, when Gov. Ted Kulongoski approves the state laws next week, as expected, domestic partners might see some disparities in the kinds of benefits they receive, particularly in the most desired ones: health and retirement plans.

Two weeks ago, the Legislature banned workplace discrimination based on sexual orientation and gender. On Wednesday, it approved House Bill 2007, which affords domestic partners the same legal rights as married couples.

The changes essentially "make the laws against discrimination clear and uniform statewide," said Lynn Nakamoto, an employment attorney with Markowitz, Herbold, Glade & Mehlhaf in Portland.

As a result, employers need to amend their antidiscrimination policies and make sure they're enforced, she said. "It doesn't have to be onerous at all. This will just be another factor to build into their policies."

Thousands of Oregon employees already work under such protections, in part because 10 cities and two counties prohibit sex-orientation and gender discrimination.

An increasing number of large employers and group-health plans also extend health benefits to domestic partners. A 1998 Oregon Court of Appeals ruling requires state's public employers to do so. The city of Portland this year required its contractors to do the same.

In the private sector, however, key benefits -- health, dental, retirement and profit sharing plans -- are regulated by the U.S. Employee Retirement Income Security Act, which trumps state anti-discrimination laws.

Under federal law, private employers can still choose to withhold benefits from same-sex partners, said Tom Kramer, an attorney with Bullard Smith Jernstedt Wilson in Portland.

But in other cases, the legislation will expand benefits in ways that may not be immediately obvious.

When an employee dies, for instance, state laws require their final paycheck and workers' compensation premiums be sent to a surviving spouse, said Tiffany A. Harris of Schwabe, Williamson and Wyatt in Portland. Under the new laws, domestic partners can get the checks, as well. The same goes for same-sex beneficiaries of stock-option and stock-purchase plans, Kramer said.

"There are applications to our employment laws that employers might not think about right away," Harris said. "But they need to try to put some procedures in place ahead of time so that in those situations, where emotions often run high, they have something in place and are in compliance with the law."

The Oregon Bureau of Labor and Industries in 2000 ruled that the Oregon Family Leave Act applied to workers taking time off to care for same-sex partners, Harris said. The leave law applies to employers with 25 or more employees and provides up to 12 weeks of unpaid time off.

At this point, all employers would do best to remind workers of any policy changes to protect themselves if a lawsuit arises, attorneys say.

"What I see happening now is more people may come out and create a domestic partnership with their partner," said Chrys Martin, an attorney with Bullivant Houser Bailey in Portland. "As that word gets out, there might be people in the workplace that are not in favor of that and might harass them and treat them differently."

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