

Management Alert



New Jersey Becomes the Fourteenth State to Recognize Same-Sex Marriage: What this Means for Employers

By Christopher Lowe, Scott Rabe and Joshua Seidman

In the latest development relating to the legalization of same-sex marriage in New Jersey, Governor Chris Christie announced today that the State would withdraw its appeal of an Order legalizing same-sex marriage in the State. The Governor's announcement followed the New Jersey Supreme Court's refusal on Friday to stay an order requiring that New Jersey begin issuing marriage licenses starting today. As a result, New Jersey becomes the fourteenth state to recognize same-sex marriage, and the first ceremonies were performed this morning beginning at 12:01 a.m.

By way of background, on September 27, 2013, in *Garden State Equality v. Dow*, New Jersey Superior Court Judge Mary Jacobson ruled that New Jersey must allow same-sex couples to marry. The lawsuit had challenged the state's Civil Union Law, which created a parallel system of civil unions for same-sex couples in New Jersey, entitling them to all of the rights, benefits, and responsibilities of marriage but denying them the right to marry. Judge Jacobson held that denying same-sex couples the right to marry was unconstitutional under the New Jersey and United States constitutions and ordered that the State grant marriage licenses to same-sex couples starting on October 21, 2013.

Initially, Governor Christie and the State Attorney General John Hoffman mounted a challenge to the Order. The State appealed the decision and sought to have the appeal heard directly by the New Jersey Supreme Court, rather than by an intermediate appellate panel. The State also sought to stay the enforcement of the ruling pending a decision on the appeal, but Judge Jacobson denied the motion. The New Jersey Supreme Court subsequently agreed to hear both the appeal of Judge Jacobson's September 27, 2013, Order and her Order denying the stay. The Supreme Court refused to stay the ruling on Friday, October 18, paving the way for same-sex marriages beginning today.

Rationale Behind the Ruling

In June, in the landmark gay rights decision, *United States v. Windsor*, the United States Supreme Court struck down the portion of the Defense of Marriage Act ("DOMA") that defined a marriage for purposes of federal law as being exclusively between a man and women. As a result, the federal government generally was required to extend marital benefits to lawfully married same-sex couples. Since *Windsor*, the Department of Treasury and the IRS have issued guidance clarifying that same-sex couples will be treated as married for federal tax purposes regardless of where they reside. In other words, for purposes of federal taxes, a same-sex married couple will be treated as married even if they reside in a state where same-sex marriage is not legal.

In light of *Windsor*, Judge Jacobson found that New Jersey's denial of same-sex couples the right to marry was unconstitutional because the State's offer of civil unions, but not marriage, to same-sex couples unlawfully deprived such couples of all of the rights and benefits of marriage. These rights, the court found, were guaranteed to them under the New Jersey Constitution as interpreted by the New Jersey Supreme Court in the 2006 *Lewis v. Harris* decision, which held unanimously that same-sex couples were entitled to all the rights and benefits of marriage.

Implications For Employers

As we advised our clients after the *Windsor* decision, employers need to ensure that their practices, policies, plans, and employee communications are compliant with the mandates of *Windsor* and related agency guidance. (For more information regarding this guidance, see [here](#), and [here](#).) Employers who have not yet made any requisite changes should do so immediately.

Employers who have already made the requisite changes to their policies, practices, plans, and employee communications will not have to make any additional changes to prepare for the imminent wave of same-sex marriages in New Jersey. Employers should be prepared, however, for a significant number of employees to get married during the next several months, and be ready to make appropriate adjustments to these individuals' personnel and benefits plan information. We will provide additional guidance as developments unfold.

Outstanding Questions

What does this mean for same-sex couples who are in civil unions under the Civil Union Law?

Judge Jacobson's decision has not invalidated the Civil Union Law, and therefore same-sex couples in civil unions will continue to be treated as married for purposes of New Jersey state law, but as unmarried for purposes of federal law.

What does this mean for same-sex couples married in other states but now living in New Jersey?

From a benefits perspective, this decision will not have any impact on same-sex couples married in other states but living in New Jersey. Since 2007, pursuant to guidance from the New Jersey Attorney General, the State has treated same-sex couples married in other jurisdictions as if they were in civil unions under the Civil Union Law. The effect of such guidance was that these same-sex couples were generally given all of the rights and benefits as married couples under state law but were not officially married. We can likely expect updated guidance from the Attorney General providing that these couples will be considered married under New Jersey law in the near future. Pursuant to DOMA, these couples had been treated as unmarried under federal law. Since the *Windsor* decision, however, such couples are considered married for purposes of federal tax law and have been afforded all of the same federal tax rights and privileges as opposite-sex married couples.

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