

Results of State Voter Referendums on Same-Sex Marriage: Implications for Employee Benefit Plans

Article By:

Jacob Mattinson

Todd A. Solomon

Brian J. Tiemann

Voter referendums on same-sex marriage were on the November ballots in four states, with voters in all four states voting in favor of gay and lesbian rights and three states legalizing same-sex marriage. Employers should take note of these recent developments in order to determine how to respond to increased requests for spousal benefits from employees who enter into same-sex marriages in one of these states.

Same-sex marriage is already legal in Massachusetts (2004), Connecticut (2008), Iowa (2009), Vermont (2009), New Hampshire (2010) and Washington, D.C. (2010). In addition, California continues to recognize same-sex marriages that were performed between June 16 and November 4, 2008, the period in which same-sex marriage was legal in California.

Maryland

On November 6, 2012, Maryland and Maine (as described below) became the first states to legalize same-sex marriage by popular vote. All other states that previously legalized same-sex marriage have done so through either legislation or court order. Voters upheld a same-sex marriage law enacted by the Maryland legislature earlier in 2012. The law allows same-sex couples in Maryland to marry beginning January 1, 2013. The law replaces an existing state law defining marriage as an opposite-sex union.

Maryland already recognizes domestic partnerships for same-sex couples whose relationship meets certain statutory requirements. But domestic partners in Maryland are entitled to only limited rights and obligations under state law, including the ability to make medical and burial decisions, and exemption from state inheritance taxes. In contrast, same-sex spouses in Maryland will be entitled to full spousal-equivalent rights under state law.

Washington

Washington voters also upheld the same-sex marriage law enacted by their state legislature earlier in 2012. The law would have taken effect 90 days after the close of the state legislature's session earlier this year, but was put on hold pending the outcome of the voter referendum. The state has not yet confirmed when the law will take effect now that it has been upheld by voters. The law will replace an existing state law defining marriage as an opposite-sex union.

Washington began recognizing domestic partnerships in 2007. A law enacted in 2009 extended all of the rights and benefits of marriage under state law to same-sex domestic partners registered with the state. The extension of these rights to domestic partners presumably no longer will be necessary once same-sex marriage becomes legal in Washington.

Maine

Maine (along with Maryland, as described above) became one of the first states to legalize same-sex marriage by public vote when voters passed a pro-marriage referendum on November 6, 2012. A law that would have legalized same-sex marriage was enacted by the Maine legislature in 2009, but was repealed by a voter referendum before it took effect.

Same-sex couples in Maine can currently register under the state's domestic partnership laws that were enacted by the state legislature in 2004. Domestic partners are granted some of the rights and protections extended to married couples under state law, including inheritance rights over their partners' property, guardianship over their incapacitated partner, entitlement to make organ and tissue donations on behalf of their partner, and protection under the state's domestic violence laws. Same-sex spouses in Maine will be entitled to full spousal-equivalent rights.

Minnesota

Voters in Minnesota rejected an amendment to their state constitution to define marriage as an opposite-sex union. Minnesota is the first state in which voters have rejected an amendment to the state constitution to ban same-sex marriage; voters in 30 other states have approved similar amendments over the past 15 years. Despite the outcome of the voter referendum, a state law banning same-sex marriage continues to prohibit same-sex couples from marrying in Minnesota.

Federal Law

The federal **Defense of Marriage Act (DOMA)** defines "marriage" as a legal union between one man and one woman as husband and wife for all purposes of federal law. DOMA defines "spouse" as a person of the opposite sex who is a husband or wife and provides that states are not required to recognize same-sex marriages performed in other states. Several recent court decisions have questioned the constitutionality of DOMA. Most recently, the U.S. Court of Appeals for the Second Circuit found DOMA unconstitutional under the equal protection clause of the U.S. Constitution in *Windsor v. United States*. Seven federal courts have now ruled that DOMA is unconstitutional; three of these decisions have been appealed to the Supreme Court of the United States. Pending the ultimate review of these decisions by the Supreme Court, DOMA is still in effect and marriage continues to be defined as an opposite-sex union for all purposes of federal law, although the federal government has announced [its refusal to defend part of DOMA](#).

Next Steps for Employers

The rapid developments in state laws recognizing marriage and other forms of same-sex unions can be confusing for employers providing benefits to employees' same-sex spouses and partners. Employers should review their employee benefit plans and consider whether any plans and procedures need to be updated to address the conflicting state law approaches to the recognition of marriages and other forms of same-sex unions. Additionally, for those employers that have employees who work (or live) in jurisdictions that have legalized same-sex marriage, they should expect to see an increase in requests for spousal benefit coverage from employees who have legally married their same-sex partners.

© 2025 McDermott Will & Emery

National Law Review, Volume II, Number 318

Source URL: <https://natlawreview.com/article/results-state-voter-referendums-same-sex-marriage-implications-employee-benefit-plan>