

# Conflicting Developments in Same-Sex Marriage Laws Add Complexity for Benefit Plan Sponsors

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Developments in state same-sex marriage laws have added complexity to the options and obligations of employers providing benefits for employees' same-sex spouses and partners. These conflicting developments—some legalizing same-sex marriage and others restricting marriage to an opposite-sex union—are occurring at an increasingly rapid pace. Further complicating the issue is that changes are occurring by judicial action, legislative action and voter referendums.

## Judicial Actions

**The U.S. Court of Appeals for the Ninth Circuit ruled in February 2012 that California's state constitutional ban on same-sex marriage violates the Equal Protection Clause of the U.S. Constitution.** Same-sex marriage was legalized in California in 2008, but was banned a few months later after state voters approved Proposition 8, an amendment to the state constitution that defines marriage as a union between a man and a woman. Despite the court ruling, same-sex marriage remains on hold in California pending the expected appeal of the decision.

## Legislative Actions

**Washington and Maryland are the most recent states to legalize same-sex marriage under laws enacted by their respective state legislatures earlier this year** (although voters in these states may ultimately decide whether the new laws will take effect, if opponents of the laws are able to collect enough signatures to support a voter referendum in each state). The Illinois legislature is also currently considering a bill to legalize same-sex marriage. Meanwhile, a bill to repeal New Hampshire's 2009 same-sex marriage law has been introduced in the state's legislature. If passed, New Hampshire would be the first state in which the legislature has reversed itself on the issue of same-sex marriage.

**This year voters in Maine will consider whether to legalize same-sex marriage.** Same-sex marriage was legalized by the Maine legislature in 2009, but was repealed by a previous voter referendum before the law took effect. Meanwhile, voters in Minnesota and North Carolina will consider whether to amend their respective state constitutions to define marriage as an opposite-sex

union (both states already have laws banning same-sex marriage). Twenty-nine states have amended their constitutions to limit marriage to opposite-sex couples; an additional 12 states have enacted state laws banning same-sex marriage.

## **Next Steps for Employers**

The rapid developments in state laws regarding marriage and other forms of same-sex unions makes providing benefits to employees' same-sex spouses and partners an evolving challenge. Employers should consider whether their benefit plans and procedures need to be updated to address varying state law approaches to the recognition of marriages and/or other forms of same-sex unions. In addition, employers need to ensure their payroll systems are structured to reflect the differing federal and state tax treatment of benefits provided to employee's same-sex spouses and partners.

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