



Your Government Respects Your Marriage: Developments in New York State Agency Recognition of Same-Sex Couples' Out-of-State Marriages

Marriages of same-sex couples validly performed in other jurisdictions are accorded legal respect in New York state under longstanding principles of law. This has been confirmed by state appellate and trial courts (*see, e.g., Martinez v. County of Monroe* (4th Dep't February 2008)) and *Godfrey v. Spano* (2d Dep't December 2008)), by our state government and many local government entities, and by private employers and companies around New York.

In keeping with the longstanding marriage recognition rule, in May 2008 Governor Paterson's counsel directed all state agencies to review their operations and ensure that their agencies extend respect to these marriages to the fullest extent permitted by law. This directive was upheld as lawful in September 2008 by a state trial court (*see Golden v. Paterson* (Sup. Ct. Bronx County)), and in January 2009 an appellate court upheld a state agency's policy to extend health insurance benefits to same-sex spouses of married government employees (*see Lewis v. New York State Department of Civil Service* (3d Dep't January 2009)).

Lambda Legal, the New York Civil Liberties Union (NYCLU) the Empire State Pride Agenda, and the America Civil Liberties Union (ACLU) have consulted with state agencies to confirm and clarify the spousal protections and obligations now to be afforded to married same-sex couples in New York. The following summary offers just some examples of the many confirmed protections — as well as obligations and responsibilities — large and small that come with state agency-recognition of marriages of same-sex couples, and it notes some still unresolved taxation issues.

Please be aware that this is a developing legal area and in some instances no hard-and-fast answers are yet available. Same-sex couples are best advised to seek legal advice about their particular situation before taking a course of action. For further information, contact Lambda Legal's Help Desk at 212-809-8585 or the NYCLU at 212-607-3300, and visit www.lambdalegal.org/our-work/states/new-york.html and www.nyclu.org/marriagefaq for some frequently asked questions and answers.

PROTECTIONS

INSURANCE COVERAGE

The New York State Insurance Department has issued a circular letter directing all insurance companies doing business in New York to extend insurance offered under state policies to same-sex spouses on the same terms as to other married couples. This includes health and automobile insurance policies, as well as other types of insurance. Some private employer "self-funded" group health insurance plans that are regulated under the federal Employee Retirement Income Security Act (ERISA) may not be covered by the directive. Nevertheless, even if the health plan is "self-funded" and regulated under ERISA, an employer may still voluntarily extend benefits to same-sex spouses. Employees should request spousal health care benefits and consult with an attorney if denied.

BIRTH CERTIFICATES

The Department of Health will now issue a birth certificate listing both the birth mother and her spouse in a marriage as parents where a child is born to a same-sex couple. ***Couples are strongly advised to obtain second-parent adoptions by the non-biological parent, even if both spouses are listed as parents on a birth certificate. A court-ordered adoption ensures legal respect for both spouses' parental status by the federal government and other jurisdictions that may not recognize marriages of same-sex couples. Consult an attorney for further advice.***

BENEFITS FOR STATE AND LOCAL GOVERNMENT EMPLOYEES

State and local government employees with same-sex spouses have the right to the same spousal employee benefits as employees with different-sex spouses. These include health and pension benefits as well as other employee benefits. Even prior to Governor Paterson's May 2008 directive, the New York State Department of Civil Service and the New York State Retirement System both adopted explicit policies, which have been upheld by state trial courts, confirming that they recognize marriages of same-sex couples.

WORKERS' COMPENSATION BENEFITS FOR SAME-SEX SPOUSES

Administrative law judges who preside over Workers' Compensation cases will recognize same-sex spouses for purposes of spousal death benefit claims. This means that same-sex spouses should be entitled to receive Workers' Compensation benefits on the death of their spouse on the same terms as all other spouses.

COMPENSATION TO SAME-SEX SPOUSES OF CRIME VICTIMS

Where all other eligibility requirements are met, the Crime Victims Board will make available spousal benefits to the same-sex spouse of a crime victim.

CEMETERY PLOTS

The Department of State will construe laws relating to public cemeteries to require that same-sex spouses have the same rights as different-sex spouses to possession, care, control and succession to ownership of, and right of interment in, a public cemetery plot.

SALES TAX EXEMPTIONS

The Department of Tax and Finance will construe sales tax exemptions (such as for transfers of cars between spouses) to apply to same-sex married couples.

TAX DEPARTMENT PROCEEDINGS

The Department of Tax and Finance will allow same-sex spouses to appear on one another's behalf in Tax Department proceedings.

INVOLUNTARY COMMITMENT OF MENTALLY ILL SPOUSE

The Office of Mental Health will allow a same-sex spouse to challenge the involuntary commitment of a spouse in a state psychiatric hospital and to inspect the mental health records of a same-sex spouse to the extent permitted by law. Conversely, a same-sex spouse also can be an applicant for involuntary commitment of his or her spouse.

SURROGATE DECISION-MAKING PROCESS FOR MENTALLY ILL SPOUSE

The Commission on Quality of Care and Advocacy for Persons with Disabilities will include same-sex spouses when applying the provisions of the Mental Hygiene Law that allow for spousal involvement in the surrogate decision-making process for mentally ill patients.

HUNTING AND FISHING PERMITS

The Department of Environmental Conservation will allow same-sex spouses to take deer and bear from the land of their spouse, and to shuck shellfish if their spouse has a permit.

JOB TRAINING FOR DISPLACED SPOUSES

The Department of Labor will consider homemakers who lose the support of their same-sex spouses eligible for job training and placement under state programs, so long as they meet other program eligibility criteria.

UNEMPLOYMENT BENEFITS FOR SPOUSES MOVING OUT-OF-STATE

Employees who leave their job in order to follow a same-sex spouse who has been transferred to a job out-of-state are eligible for NYS unemployment benefits on the same basis as all other spouses, so long as they meet other claims requirements.

ROOMING QUARTERS FOR MARRIED MINIMUM-WAGE WORKERS

The Department of Labor will consider same-sex spouses entitled to room together in on-site sleeping quarters available to married hotel industry minimum wage employees.

RESPONSIBILITIES AND OBLIGATIONS

ELIGIBILITY FOR CERTAIN TAX BENEFITS

The Department of Tax and Finance will include same-sex spousal income for purposes of determining eligibility for certain benefits, such as the School Tax Relief (STAR) program.

ETHICS FILINGS

The State Commission on Public Integrity will require same-sex spouses to be included on employee ethics filings.

UNRESOLVED TAX ISSUES

The New York State Department of Taxation and Finance is expected to give further guidance in the near future on at least two areas of state tax law. Under the federal Defense of Marriage Act (DOMA), the federal government does not recognize marriages of same-sex couples for tax and other purposes. Some statutory state tax provisions incorporate federal tax definitions and statuses. The interplay of federal and state tax laws thus could cause special challenges to recognition of marriages of same-sex couples in specific areas of New York tax law. These may include:

FILING A JOINT PERSONAL STATE TAX RETURN

In 2006, in response to petitions submitted by Lambda Legal, the Department of Taxation and Finance issued advisory opinions stating that, given very specific statutory language in the New York and federal tax codes, same-sex married couples must file their state tax returns separately, as they file their federal returns. A spokesman for the Department recently issued a public statement that the Department “is currently reviewing our policy on this and other same-sex marriage-related tax issues” and “expects to issue a statement on this subject shortly.” Until there is a final pronouncement from the Department on the issue, same-sex couples are directed to continue to file their state tax returns separately. If joint filing is permitted, state taxes will be higher for some couples and lower for others.

TAXATION OF SPOUSAL EMPLOYMENT HEALTH BENEFITS

The Department of Taxation and Finance is also considering whether the state tax laws allow a departure from following the federal tax requirement that employer contributions to pay for spousal health insurance coverage for same-sex spouses be treated as income to the employee. This could mean that, unlike domestic partner benefits which are subject to state taxation, spousal health benefits between same-sex spouses may be exempt from such state taxation.

Further developments on these tax issues will be announced.