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MARRIAGE IS A WORKER'S ISSUE

Many people understand that ending discrimination against same-sex couples in marriage is a **civil rights issue**. It's about supporting equal treatment under the law for gays and lesbians.

Many people also agree that civil marriage for gay people would **help children and their families** -- civil marriage as a legal structure helps to stabilize families and unquestionably helps children when the law provides their families with innumerable benefits (hospital visitation rights, rights to make medical decisions, rights to Family and Medical Leave, rights to family health insurance, access to school records, etc).

People are beginning to understand that ending marriage discrimination is also a Worker issue.

Civil marriage provides families with **over 1400 rights, protections and responsibilities**. Many of these benefits are **EMPLOYMENT** and **family benefits** like:

- Access to **Social Security** protections upon the death, disability or retirement of a spouse
- Access to **Family & Medical Leave** protections to care for a new child or a sick or injured family member
- Access to **Worker's Compensation** protections for the family of a worker injured on the job
- Access to **COBRA** (so spouses don't immediately lose health insurance when one is laid off)
- Access to **ERISA** protections (like the ability to leave a pension to your spouse)
[ERISA = Employee Retirement Income Security Act]
- Access to hundreds of other critically important employment benefits and protections.

As discussed in more detail below, marriage confers automatic protections and responsibilities that are now essential for sustaining families. Wages are not the only bread and butter issue. Marriage, too, decisively affects a worker's ability to adequately protect herself and her family.

Protections Related To Death, Illness Or Injury -- Without Marriage

- A surviving same-sex partner of a firefighter, police officer or corrections officer killed in the performance of duty is *not* entitled to receive the salary the deceased employee could have received.¹
- A surviving same-sex partner is *not* entitled to "line of duty" benefits -- a one-time award of \$100,000 that is paid to a certain family members of a deceased firefighter, public prosecutor, police officer or corrections officer.²
- A surviving same-sex partner of a disabled, retired municipal or state employee is *not* entitled to an annual allowance of \$6,000.³

¹ G.L. c. 32, § 100.

² G.L. c. 32, § 100A.

³ G.L. c. 32, § 101.

- A surviving same-sex partner of a state employee who dies because of an injury sustained or hazard undergone as part of his or her job is *not* entitled to an accidental death benefit.⁴
- A surviving same-sex partner of an employee subject to the Massachusetts state pension plan is *not* entitled to a “Member Survivor Allowance” of two-thirds of the employee’s pension amount if the employee dies before retirement.⁵

Social Security Protections -- Without Marriage

- Under social security law, if a covered worker is retired, disabled or dies, his or her same-sex partner *cannot* claim benefits for the benefit of himself or herself and any children based on the worker’s work credits.⁶
- A surviving same-sex partner *cannot* claim the one-time death benefit of \$255 provided by social security for a surviving spouse.⁷
- The same-sex partner of a worker who is disabled and eligible for social security disability benefits is *not* entitled to receive additional benefits if he or she is raising children under age 16 or if the disabled worker is at least age 62.
- A same-sex partner has *no access* to protections under social security law for families in which one person was a lower earner because of other familial responsibilities, such as allowing the lower earner to start collecting on the higher earner’s social security at the lower age of 62, or allowing increased benefits based on the earnings of the higher earner.⁸

Bereavement and Family & Medical Leave -- Without Marriage

- In most workplaces, a gay or lesbian employee will *not* be able to take bereavement leave for the death of his or her partner or a member of the partner’s family.
- A gay or lesbian employee is *not* entitled to protections under Massachusetts’ version of the Family and Medical Leave Act (FMLA) allowing an employee to take time off for a child’s school meetings unless the employee is the child’s parent through blood or adoption, or for a partner’s relative’s medical appointments, even if they live in the same household.⁹
- The Federal Family and Medical Leave Act does *not* allow a partner in a same-sex couple the time off granted to a spouse of up to twelve weeks off every twelve months to care for his or her partner, the partner’s biological or adoptive child, or the partner’s parent, even if they are all living in the same household.¹⁰

Worker’s Compensation Protections -- Without Marriage

- Gay and lesbian families are *not* included within the workers’ compensation system, which is intended to assist an employee and an employee’s dependents (family or next of kin) if these people were wholly or partially dependent on the employee at the time of the employee’s injury or death and the injury or death is job-related.¹¹

⁴ G.L. c. 32, § 9(1), (2)(a).

⁵ G.L. c. 32, § 12(2)(c), (d).

⁶ 42 U.S.C. § 402 (b-f).

⁷ 42 U.S.C. § 402 (i).

⁸ See 42 U.S.C. § 402 (e), (f).

⁹ G.L. c.149, § 52D.

¹⁰ 29 U.S. C. §§ 2611(13) (definition); 2612(1) (eligibility for benefits).

¹¹ G.L. c.152, § 1.

- An employee's same-sex partner is *not* entitled to any protections, either as a spouse or next-of-kin, regardless of whether the partner was dependent on the injured worker for support.¹²
- A surviving same-sex partner is *not* provided with two-thirds of the working wage of the employee's working wage upon the employee's death.¹³

Access to Insurance -- Without Marriage

- A lesbian or gay couple *cannot* purchase a joint policy of health insurance on the open market.¹⁴
- A same-sex partner is *not* considered a "dependent" for purposes of a health insurance, dental insurance, and optometric coverage.¹⁵
- Surviving same-sex partners have *no* ability to continue to receive insurance coverage under a deceased spouse health insurance plan for up to 36 months.¹⁶
- If a person is covered by insurance and is laid off, his or her partner is not automatically entitled to continued coverage for up to 39 more weeks.¹⁷
- A same-sex partner is *not* entitled to continued insurance benefits under a former partner's insurance plan.¹⁸
- When an employer does provide insurance benefits to a gay or lesbian employee for his or her "domestic partner," those benefits are taxable to the employee under state and federal law, even though they are a form of compensation, unless the partner qualifies as a tax dependent. Also, the employer must pay social security and unemployment taxes on the value of the benefit.¹⁹
- A same-sex partner is *not* considered a member of his or her partner's family for purposes of obtaining a life insurance policy for two or more members of a family.²⁰
- A gay or lesbian state or municipal employee cannot obtain insurance coverage for his or her partner or partner's child.²¹

Protections Regarding Retirement -- Without Marriage

- A gay or lesbian employee does *not* have the option available under many private pension plans (especially defined benefit plans) to select a "joint and survivor annuity," which means that in exchange for taking a smaller amount during his or her life, the surviving partner would be able to still collect on the pension even after the worker has died. This is a matter of federal law.
- A gay or lesbian employee subject to the Massachusetts state employees' retirement system also does *not* have the option of selecting a joint and last survivor allowance.²² A retired worker who wishes to provide continued protection for a same-sex partner can select the "Cash Refund Annuity Option," which grants the beneficiary the unpaid balance of the monies the worker contributed to the retirement

¹² G.L. c.152, § 35A.

¹³ G.L. c.152, § 31.

¹⁴ G.L. c. 175, § 108.

¹⁵ See G.L. c. 176B, § 1 (medical service corporation); G.L. c. 176A, § 1 (non-profit hospitals); G.L. c. 176E, § 1 (dental service corporation); G.L. c. 176F, § 1 (optometric service corporation); G.L. c. 176J, § 1 (GMBP Health); G.L. c. 176M, § 1 (non-group health insurance plans).

¹⁶ See e.g. G.L. c. 176J, § 9. See also 29 U.S.C. §§ 1161, 1163 (COBRA).

¹⁷ G.L. c.175, § 110G. See also G.L. c. 176A, § 8D (non-profit hospital service corporations); G.L. c. 176B, § 6 (same with medical service corporations).

¹⁸ G.L. c.175, § 110I.

¹⁹ 26 U.S.C. §106.

²⁰ G.L. c. 175, § 123.

²¹ See *Connors v. Boston*, 430 Mass. 31 (1999).

²² G.L. c. 32, § 12(2) Option (a).

system (usually around 10% of the total pension), but only to the extent the worker's contribution has not already been paid out.²³

- A same-sex partner does *not* have the ability to waive his or her partner's receipt of a pension in a form other than a qualified joint and survivor annuity. For spouses, this is required under the Federal Employee Retirement Income Security Act (ERISA), which trumps all state laws in this regard.²⁴
- An unmarried partner *cannot* "roll-over" his or her deceased partner's retirement plan assets into an IRA in the surviving partner's own name. This means that rather than being able to let the money continue growing tax free, the survivor, as the beneficiary, must begin to take distributions immediately (he or she can do so over a period of time based on his or her life expectancy). If the surviving partner is under age 59½ there is an early withdrawal penalty of 10% on the value of the IRA or 401(k).
- A surviving same-sex partner who is the beneficiary of the deceased partner's retirement plan *cannot* receive those tax-free. Instead, he or she is responsible for federal income taxes immediately on any distributions and there is no period in which those 401(k) assets can continue to grow tax-free. Massachusetts also taxes any gains from the IRA (the amount of the contribution itself is exempt from Massachusetts income tax).

Other Legal Protections -- Without Marriage:

- A same-sex partner has no access to wage assignment protections, and thus his or her partner may assign his or her wages without his or her consent.²⁵
- Same-sex couples who have not been able to do a joint adoption will not be able to obtain unemployment dependency benefits for their child when the unemployed worker is not the legal parent.²⁶
- A surviving same-sex partner of a veteran killed in action or who died from service-connected disability incurred during a war will not be accorded preference for civil service (along with others).²⁷
- A surviving same-sex partner of a registered professional, such as an insurance agent or broker,²⁸ a registered pharmacist,²⁹ a registered dentist,³⁰ a registered optometrist,³¹ or a funeral director,³² who has died will not be entitled to carry on the business under the supervision of another professional.

Married couples have access to these protections in times of vulnerability, as well as to address more mundane but practical needs and to protect the family's security as they age. While gay and lesbian families can provide limited protections for themselves by creating wills, partnership agreements, or other documents, so can everyone else, and no one considers these a substitute for marriage. The vast majority of legal protections and obligations simply cannot be contracted. Only when gay and lesbian workers can marry will they receive the level of protection that they need and deserve for their families -- the same legal protection that their married, heterosexual colleagues presently enjoy.

²³ G.L. c. 32, § 12.

²⁴ ERISA § 205(d)(1).

²⁵ G.L. c.154, § 2.

²⁶ G.L. c. 151A, § 29.

²⁷ G.L. c. 31, §§ 26, 28.

²⁸ G.L. c. 175, § 174D.

²⁹ G.L. c. 112, § 36.

³⁰ G.L. c.112, § 53.

³¹ G.L. c.112, § 73.

³² G.L. c.112, § 83.