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New York's Marriage Equality Act and Employee Benefits Plans

On July 24, 2011, New York's Marriage Equality Act became effective. The Marriage Equality Act permits same-sex marriage in the State of New York and provides generally that same-sex married couples are to be treated the same as opposite-sex married couples under [New York law](#). This law applies to same-sex spouses living in New York, even if those spouses were legally married under the laws of a different state that recognizes same-sex marriage (e.g. Iowa).



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Employers with New York state income tax withholding and reporting obligations will want to review the impact of the law on their benefit plans and, in particular, work with their payroll administrator to confirm proper income tax withholding and reporting for health care benefits provided to same-sex spouses of New York employees.

Income Tax Withholding and Reporting

Under the Marriage Equality Act, New York now treats same-sex married couples the same as opposite-sex married couples in all respects, including state income tax purposes. See New York State Department of Taxation and Finance, [Technical Memorandum](#) (July 29, 2011). Therefore, if a New York employee has a same-sex spouse, the employer should not withhold or report the value of the coverage under New York state tax law. Consequently, the Marriage Equality Act causes New York state tax law to diverge from federal tax law. The Defense of Marriage Act's definition of marriage, which limits marriage for federal law purposes to opposite-sex couples, governs federal law, including the Internal Revenue Code (the "Code"). This divergence affects income withholding and reporting. For example, under New York state tax law, an employee with a covered same-sex spouse will receive tax-favored treatment with respect to health coverage, but, under federal tax law, the same-sex spouse would not receive tax-favored treatment on the basis of marriage (although the same-sex spouse may receive tax-favored treatment if the same-sex spouse is an employee's dependent under section 152 of the Code).

Next Steps

Employers with New York employees should review their benefit plans to determine the impact of the Marriage Equality Act. In addition, employers should contact their payroll administrators to confirm that New York state taxes are being properly withheld and reported. For example, if an employee notifies the employer that the employee has a same-sex spouse and the employer has previously been including the amount of the same-sex spouse's health coverage in the employee's income under its provisions for domestic partner coverage, the employer should cease doing

so with respect to income for purposes of New York state, New York City, or Yonkers tax. This does not, however, affect federal income tax withholding and reporting obligations for benefits provided to same-sex spouses.

Information on New York state income tax withholding and reporting is available from the New York State Department of Tax and Finance. Information regarding Forms NYS-45 and NYS-50 is available [here](#).

Conclusion

If you have any questions about the New York Marriage Equality Act and its impact on employee benefit plans, please contact the attorney in the Benefits and Compensation practice group with whom you work.

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