

# THE NATIONAL LAW REVIEW

## Same-Sex Marriage in Illinois

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With same-sex marriages to begin in the state of Illinois next year, employers should expect an increase in requests for spousal benefit coverage from employees who have legally married their same-sex partners. The new law is set to take effect on June 1, 2014.

Both the Illinois House of Representatives and Senate voted on Tuesday, November 5, 2013, in favor of a bill to legalize same-sex marriage. Illinois Governor Pat Quinn indicated that he will sign the bill into law on November 20, 2013. The bill, known as the [Religious Freedom and Marriage Fairness Act](#), is set to take effect on June 1, 2014. At the time of publication, 14 states and the District of Columbia have legalized same-sex marriage, with Illinois poised to become the 15th.

The Illinois Religious Freedom and Marriage Fairness Act both amends Illinois' definition of marriage and clarifies how marriages and civil unions entered into elsewhere will be treated for purposes of Illinois law. Specifically, the act provides that:

"All laws of this State applicable to marriage ... shall apply equally to marriages of same-sex and different-sex couples and their children.

"Parties to a marriage and their children, regardless of whether the marriage consists of a same-sex or different-sex couple, shall have all the same benefits, protections, and responsibilities under law ... .

"A civil union, or a substantially similar legal relationship other than common law marriage, legally entered into in another jurisdiction, shall be recognized in Illinois as a civil union. A marriage, whether of the same sex or different sexes and providing that it is not a common law marriage, legally entered into in another jurisdiction, shall be recognized in this State as a marriage ... ."

The act does not repeal Illinois' existing civil union laws. Same-sex and opposite-sex couples can continue to enter into civil unions in Illinois. Same-sex couples who want to convert their existing civil union into a marriage can do so after the marriage law takes effect on June 1, 2014.

### Federal Law

Earlier this year the Supreme Court of the United States ruled in *U.S. v. Windsor* that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional (see "[Supreme Court Rules on DOMA and California's Proposition 8](#)" for more). Section 3 of DOMA had provided that, for purposes of all federal laws, the word "marriage" means "only a legal union between one man and one woman as husband and wife," and the word "spouse" refers "only to a person of the opposite-sex who is a husband or wife." Subsequent Internal Revenue Service (IRS) and U.S. Department of Labor guidance clarified that, as a result of *Windsor*, favorable federal tax treatment of spousal benefit coverage would extend to all same-sex couples legally married in any jurisdiction with laws authorizing same-sex marriage, regardless of whether the couple currently resides in a state where same-sex marriage is recognized (see "[IRS and DOL Guidance Clarifies Employee Benefits Impact of Supreme Court's DOMA Ruling](#)" for more information).

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## Next Steps for Employers

After same-sex marriage is legalized in Illinois, and as part of an overall review post-*Windsor*, employers will have to consider whether their benefit plans and procedures need to be updated to address benefit eligibility of same-sex spouses and to comply with federal and state laws. Employers may want to review their employee benefit plans to prepare for requests for benefits coverage from employees who marry their same-sex partner after the Illinois marriage law takes effect on June 1, 2014. The most common requests for benefits for a same-sex spouse are likely to be coverage under an employer's medical, dental and vision plans, in addition to certain spousal benefits that are required by federal law (e.g., spousal protection under qualified retirement plans and special enrollment and COBRA rights under health and welfare plans).

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