Alaska Supreme Court Rules Denial of Equal Benefits to Gay and Lesbian State Employees' Domestic Partners Violates State Constitution

Under Alaska's constitution, the government cannot deny employment-related benefits to domestic partners of gay and lesbian state employees and retirees, while providing such benefits to the spouses of state employees and retirees, according to the Alaska Supreme Court's ruling in Alaska Civil Liberties Union v. State of Alaska.

Like virtually all public employers, Alaska and the municipality of Anchorage offer health insurance and other benefits to spouses of their employees. Only married couples are eligible to receive such benefits. Under the Alaska Constitution, same-sex couples may not marry. As a result, the public employee benefit programs offered by Alaska and Anchorage effectively discriminate against opposite-sex married couples by treating them differently than same-sex domestic partners.

The American Civil Liberties Union ("ACLU") of Alaska and nine homosexual employees and their partners filed suit against the State and the municipality of Anchorage challenging the constitutionality of this disparity in treatment. The complaint alleged that by virtue of the statutory ban on same-sex marriages, the state benefit programs' spousal limitation violated the equal protection clause of the Alaska Constitution, which guarantees "equal rights, opportunities and protection under the law," and is hence more expansive than its federal counterpart, the Fourteenth Amendment to the U.S. Constitution.

The Superior Court found this contention unpersuasive and granted defendants' motion for summary judgment. In its reasoning the Court noted that the State was discriminating between married and non-married couples and not between opposite-sex and same-sex couples. Further, the Court found that the right to employee benefits was not a fundamental right and, therefore, this entitlement could be compromised by a public employer if doing so would further a legitimate economic interest. At the trial court level, the State and the municipality successfully argued that the availability of health insurance and other types of employee benefits to spouses but not domestic partners was justified by the government's legitimate interest in reducing costs, increasing administrative efficiency, and promoting the institution of marriage. On appeal, however, Alaska's highest court concluded otherwise.

Reversing the lower court's grant of summary judgment to the public employer defendants, the Supreme Court of Alaska agreed that the governmental interests of cost control, administrative efficiency, and promotion of marriage are legitimate, but concluded that the absolute denial of benefits to public employees with same-sex partners is not substantially related to those objectives. As an initial matter, the Court found it insignificant that the plans' spousal limitation adversely impacted all unmarried employees, regardless of sexual orientation. The Court reasoned that although unmarried opposite-sex couples are similarly ineligible to receive employee benefits, they can alter their ineligible status by getting married. In contrast, same-sex couples are prohibited from marrying under the Marriage Amendment to the Alaska Constitution. Agreeing with plaintiffs' position that the distinction made by the benefit plans is between same-sex and opposite-sex couples, not between married and non-married employees, the Court found that the benefit programs discriminate on their face by limiting eligibility to "spouses."

Turning to the equal protection analysis, the Court began by acknowledging that the economic interests advanced by defendants, namely cost control, administrative efficiency, and promotion of marriage, are legitimate. But the Court found none of these interests to be specifically advanced by excluding same-sex domestic partners from coverage

under public employer-sponsored employee benefit programs. While the government's goal of cost control is obviously furthered by restricting eligibility, the Court noted this objective is in tension with the interest in promoting marriage, which necessarily expands the group of individuals eligible to participate in the employee benefit programs. Analyzing the government's interest in the promotion of marriage, the Court found that making benefits available to spouses may encourage marriage, but this was beside the point. At issue was whether the denial of benefits to domestic partners, who by operation of State law are unable to marry or become spouses, created an incentive to marry; the Court determined that no such connection could be said to exist. Finally, the Court pointed to the adoption of domestic partner benefit programs in other states and the private sector in support of its finding that a wholesale exclusion of employees' same-sex partners is not substantially related to the goal of maximizing administrative efficiency.

Because the challenged disparity in treatment did not advance any of the government's economic interests, the spousal limitation was struck down as violating the equal protection guarantees of the Alaska Constitution.

Alaska Civil Liberties Union. v. State of Alaska, No. S-10459, 2005 WL 2812481 (Alaska Oct. 28, 2005).

***Professional Pointer*:** The American Civil Liberties Union is currently involved in a similar challenge to Salt Lake City's employee benefit programs. Eleven states (California, Connecticut, Illinois, Iowa, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington), the District of Columbia, and at least 130 cities and counties currently offer same-sex benefits to employees. At least 247 Fortune 500 companies now offer domestic partner health benefits. A 1997 survey conducted by the Society for Human Resource Management revealed that 85 percent of companies providing domestic partner benefits reported no drastic fluctuation in costs as a result of doing so. However, the interplay between state-based rights and federal law continues to produce substantial legal questions regarding same-sex benefits in the private sector. The Defense of Marriage Act, defining marriage as between a man and a woman, provides a safety net for private employers who deny benefit coverage to domestic partners. Because of the definition employed in the act, rights or requirements under federal law hinging on marital status will not apply to same-sex couples. This is not to say that State laws are without significance. For example, ERISA does not preempt state laws regulating insurance, even though these laws affect employee benefit plans. While private employers are not obligated to pay for domestic partner coverage, in some states, such as New Jersey, insurance companies must offer coverage to domestic partners on the same terms offered to married couples. In addition, as the law governing civil unions continues to evolve, some employers who choose to provide same-sex benefits are limiting eligibility to domestic partners who have obtained this legal status.

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