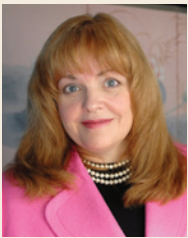


# Same-Sex Marriages Bring Benefits Review at Work

by John Pacenti  
jpacenti@alm.com

When the first Florida same-sex couples legally tied the knot in Miami on Monday, employers were officially on notice to adjust benefits and policies to match the new reality.

“My best advice to every Florida employer who isn’t already changing their



Ballman

policies in regard to gay marriage is to get with an employment lawyer on the management side because it’s going to affect a lot of things,” said Fort Lauderdale labor and employment attorney Donna Ballman, who represents workers on a variety of issues.

How many things?

Family medical leave, pensions, health and life insurance benefits, tax filing status and confidentiality agreements to name a few, she said.

Ballman expects an uptick in discrimination lawsuits. Others in employment law wouldn’t be surprised to see a Hobby Lobby-like challenge from a business claiming a religious exemption.

For many businesses, Monday’s marriages followed changes at the office.

Now that 70 percent of the country recognizes same-sex marriage, many companies operating in other states have already changed benefits. Many businesses anticipated where the law was heading after the U.S. Supreme Court stuck down the federal Defense of Marriage Act in 2013.

Lakeland-based Publix Super Markets Inc. announced late last year that it would recognize same-sex marriages.

Publix operates in Florida, Georgia, Alabama, Tennessee, South Carolina and North Carolina with 174,000 employees. The Carolinas recognized same-sex marriage last year.

“For us, the right thing to do was to extend the same level of health care coverage



J. ALBERT DIAZ

Karla Arguello kisses Cathy Pareto in the Dade County Courthouse after becoming the first same-sex couple to receive a marriage license in Florida. Arguello’s mother Bertha Blanco is at left.

to all of our eligible associates regardless of which state,” said Publix spokeswoman Maria Brous. “It’s important for us. We are a family-based company, and it’s important for us to offer these benefits to our eligible associates.”

Karla Arguello and Cathy Pareto became the first same-sex couple to receive a marriage license in Florida when

they exchanged vows after Miami-Dade Circuit Judge Sarah Zabel lifted a stay finding the state’s 2008 ban on gay marriage unconstitutional.

The rest of the state was expected to follow suit Tuesday after a Tallahassee federal judge’s stay expired at midnight, making Florida the 36th state to legalize same-sex marriage. Texas is the only large state left with a ban intact.



Zabel

Miami attorney Bob Friedman, a partner at Holland & Knight in Miami who represents companies, said he got a weekend call from a general counsel of a client asking what the company should do after word spread about the Publix policy change.

“That really got their attention,” he said. “In the employee benefits area and employee policy, if there is something that a company is extending to opposite-sex spouses but is likely to exclude same-sex spouses, that company is going to be open to a lawsuit.”

Miami attorney Jack Lord, co-chair of Foley & Lardner’s lesbian, gay, bisexual and transgender affinity group, noted same sex-couples gained rights to federal benefits, such as Social Security and 401(k) retirement plans, when DOMA was struck down.

Still with Monday’s news, human resource departments will be busy updating health, pension and tax-filing statuses of employees with same-sex spouses.

“The main thing employers have to think about are health-benefit plans so if there is dependent coverage it will include a same-sex spouse,” Lord said.

However, for some companies, such as his law firm, it will be more of a matter of updating paperwork since domestic partners have long been included in the health plan.

Attorney Michael Landen, an employment law expert with Kluger Kaplan Silverman Katzen & Levine

in Miami, said he doesn’t foresee a problem for companies if they follow the law.

“Where it could potentially become a problem is if employers decide to treat this differently like what you had with Hobby Lobby where some employers said, ‘This is my business.

I don’t agree with it, and I don’t want to offer that same benefit.’ That is when we will see this become interesting, and we will see some lawsuits.”

## HOBBY LOBBY

Oklahoma-based Hobby Lobby Stores Inc., a family-owned company, persevered in the U.S. Supreme Court last year in fighting the federal mandate to provide contraceptive health coverage to its female employees. It claimed the Affordable Care Act’s mandate violated the family’s First Amendment religious tenet against emergency birth control, such as the morning-after pill.

Lord noted same-sex marriage is now a constitutional right, unlike the right to have health insurance cover emergency contraceptives.

“I could see claims being made on this basis, but because being married is such a fundamental right I don’t think that would win the day,” he said.

In the end, companies are about making money, not so much public policy. He noted no companies have denied



J. ALBERT DIAZ

At left, Jeffrey, left, and Todd Delmay from Broward County exchanged wedding rings and at right, Juan Talavera, left, and Jeffrey Ronci show off their wedding bands. The two couples married Monday after Miami-Dade Circuit Judge Sarah Zabel lifted a stay on the finding that the state’s 2008 ban on gay marriage was unconstitutional.

benefits based on religious beliefs in states where gay marriage is legal. For most businesses, gay marriage is good news as couples often choose tropical climates for weddings—meaning more business for hotels, caterers and even ministers.

“It’s going to be a huge economic benefit to the state of Florida,” Lord said.

Attorney April Boyer, who represents employers as a partner with K&L Gates in Miami, said benefit and leave policies will be most affected, but unless a company has specifically defined a spouse as a person of the opposite sex, policies shouldn’t have to be rewritten.

“It shouldn’t require companies to change policy, but they will have to apply their existing policies properly,” she said.

## ‘SMALL ONSLAUGHT’

Boyer and Ballman both said same-sex marriage will allow more people to use the Family Medical Leave Act to care for loved ones.

Ballman wasn’t so optimistic that all companies are willing to extend benefits to same-sex spouses. She ex-

pects a “small onslaught” of discrimination cases.

“The biggest issue is going to be discrimination,” she said. “The fact that people are gay is going to come to the attention of co-workers and supervisors who don’t like gay people.”

Ballman said same-sex spouses can now be part of any privileged legal discussions she has with clients.

“I absolutely hate having to exclude gay partners from attorney-client meetings, but it’s necessary so there’s no waiver of attorney-client privilege,” she said. “Once you’re married, your spouse can attend even attorney-client meetings with your permission.”

Employee benefits also will play a big role in the family law arena, said attorneys Jason Marks and Richard Segal of Kluger Kaplan in Miami. They expect new business from prenuptial agreements and eventually divorces by gay couples.

“This is good news for everybody in Florida but certainly for those in our practice area,” Marks said.

**John Pacenti can be reached at 305-347-6638.**