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## The California Supreme Court's Marriage Ruling -- Issues for Employers

### The Ruling

On May 15, 2008, the California Supreme Court ruled that any California statutes defining marriage as a union solely between a man and a woman are unconstitutional. In a 4-3 decision, the Court held that treating a same-sex couple differently than an opposite-sex couple impinges on the same-sex couple's "fundamental interest in having their family relationship accorded the same respect and dignity enjoyed by an opposite-sex couple."

California and Massachusetts are the only two states to recognize same-sex *marriage*. Other states, including Connecticut, Hawaii, Maine, New Hampshire, New Jersey, Oregon, Vermont, and Washington, provide some benefits to same-sex couples.

### Effect on California Employers

Currently, California provides extensive protections on the basis of sexual orientation in the employment context. Thus, this decision likely will not dictate a change for most employers' employment policies or practices.

California already allows same-sex couples to enter into registered domestic partnerships. For purposes of providing benefits to partners in a domestic partnership, employers were permitted to ask for proof of registration, but generally could not ask for proof of marriage for heterosexual couples. In light of the Court's ruling, employers must treat marriages between same-sex couples equal to marriages between opposite-sex couples. As such, employers cannot ask same-sex couples for proof of marriage.

Registered domestic partnerships entered into prior to the ruling are still valid. Likewise, same-sex couples (and opposite-sex couples in which one person is over 62 years of age) may still enter into registered domestic partnerships. Employers are still permitted to request proof of registration.

### Recommendation

For employers whose policies already provide benefits and protections without regard to sexual orientation, the Court's ruling appears to have no practical effects. However, the decision should serve as a reminder to all employers not to differentiate on the basis of sexual orientation. The Court made clear in its ruling that sexual orientation should be afforded the same protected status as that given to race and sex -- the highest possible protection under the California Constitution.

In the wake of the Court's ruling, we recommend you make sure your employment policies, practices and procedures do not discriminate on the basis of sexual orientation.

### What's Next

The issue of whether same-sex couples have the right to marry is not completely resolved. Although the court applied strict scrutiny, which requires the government prove the differential treatment is necessary to further a compelling state interest, some commentators believe a constitutional amendment can effectively reverse the Court's ruling. Groups opposed to same-sex marriage are considering placing a constitutional amendment on the November ballot. It is unlikely this amendment will have any effect on California employers because California law already provides protections on the basis of sexual orientation in the workplace.

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