

## **New Hampshire Department of Insurance Issues Advisory on Civil Union Law**

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Most employers are somewhat familiar with the potential impact of New Hampshire's new civil union law that goes into effect on January 1, 2008.

The primary compliance considerations for New Hampshire employers relate to ensuring that non-ERISA employee benefits such as sick leave, bereavement leave, crime victim's leave, etc., are extended to employees in civil unions on the same terms that they are extended to married employees. For example, if a leave of absence policy permits an employee to be absent to care for a spouse, the policy must now also permit an employee in a civil union to be absent to care for his/her civil union partner.

With respect to ERISA-benefits, such as private employer-provided health and dental benefits, the New Hampshire Department of Insurance issued an advisory on November 2, 2007, stating that all benefit plans should be amended or administered to provide coverage to civil union couples ([click here to see the advisory](#)). This interpretation means that insurance carriers doing business in New Hampshire must include civil union partner coverage within the class of persons who qualify as eligible dependents for insurance coverage purposes.

This presents an interesting dilemma for employers who technically may not be required to offer health insurance coverage to couples that are not lawfully married heterosexuals (due to ERISA pre-emption). We anticipate that health insurance carriers will amend their plans to comply with the directive of the New Hampshire Department of Insurance and offer employers the option to purchase the amended product only. At a recent New Hampshire Business and Industries Association meeting, there was discussion about the possibility for an employer to opt out of providing civil union "spouse" coverage under very limited and yet undefined circumstances. Employers interested in opting not to provide coverage to civil union couples are likely to either find their carrier declining to write coverage under those circumstances or to have to overcome significant hurdles to do so.

The New Hampshire Department of Insurance is expected to provide further written guidance in the coming weeks. Bernstein Shur will provide an additional update at that time.

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