

Same-sex marriage rulings create dilemma

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The Seattle Times
March 30, 2014

Can companies that fund their own health-insurance plans refuse to extend benefits to their employees' same-sex spouses?

As more states legalize same-sex marriage, questions around these kinds of plans — often offered by large employers and overseen by the federal government — will continue to surface.

The question already has come up in Washington state, where O'Reilly Auto Parts recently reached an agreement with the state attorney general to extend such benefits to same-sex spouses after initially declining to do so.

Starting April 1, the company will extend the spousal benefits to same-sex couples not only in its Washington stores but also in stores in other states where same-sex marriage is legal.

Based in Springfield, Mo., O'Reilly's employs nearly 2,200 workers across Washington, one of the 42 states in which it operates.

In response to the state's investigation, the company had said it was not obligated to extend same-sex spousal benefits because its self-funded health plans are regulated by federal law, which pre-empts state law.

But O'Reilly relented just days after the state filed a petition in King County Superior Court to force it to fully explain its decision to deny benefits to same-sex spouses of its employees while extending them to opposite-sex couples.

It was part of an investigation the attorney general launched in January after an O'Reilly employee in a same-sex marriage complained.

The state said extending benefits to one group of married employees while denying them to another is illegal under state law, including the state's Consumer Protection Act, which prohibits unfair and deceptive business practices that discriminate against consumers in a commercial setting.

O'Reilly had said its self-funded health and dental plans come under the federal Employee Retirement Income Security Act, or ERISA, which regulates a range of private health and pension-benefit plans.

ERISA, the company had argued, trumps state law.

Typically, employers that are large enough self-insure for health care, assuming the financial risk for providing health care benefits to employees.

A year ago, there was no question employers with such plans had no obligation to comply with state laws governing benefits to same-sex couples — although many in Washington state did so on their own.

But a decision by the U.S. Supreme Court last summer required federal agencies to recognize same-sex unions.

And while that opened hundreds of previously denied federal benefits to same-sex couples — things such as joint federal taxes and immigration petitions for spouses — it left unsettled the question of whether states could compel companies with federally regulated ERISA plans to provide same-sex spousal benefits.

The answer is unclear, said Brian Moulton, chief legislative counsel with the Human Rights Campaign, a national gay-rights advocacy group.

A spokesman for the U.S. Department of Labor said there's no federal mandate for employers with ERISA plans to cover same-sex spouses in their employee-benefit plans. But he said the department, which enforces ERISA, recommends that employers provide the same health care benefits to same-sex spouses and opposite-sex spouses.

The state Office of the Insurance Commissioner said it has no jurisdiction over ERISA plans, and its authority hasn't changed because of the Supreme Court's Defense of Marriage Act decision: Those plans are governed by federal law, the commissioner's office said in a statement.

And Laura Lindstrand, policy analyst with the Human Rights Commission, which enforces the state's law against discrimination, said her office is in discussions with the attorney general's office to determine if the Defense of Marriage Act ruling had any impact on ERISA cases.

The attorney general's office said it does not believe ERISA trumps the state's Consumer Protection Act.

Employment-law attorneys call it a gray area. Many say they encourage employers to extend the service anyway, just to be legally in the clear.

“If as an employer you are not extending those benefits to same-sex spouses while offering them to opposite-sex couples, a strong argument can be made that that's discriminatory,” Moulton said.

But that presents a further complication because sexual orientation is not protected against employment discrimination under federal law.

Ultimately, he and others say, it may take the courts to settle the issue.