

Florida's recent ruling on gay marriage should prompt employers to revisit their employee handbooks

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All companies should have employment policies in place to not only show that they are in compliance with all applicable workplace laws, but also to provide their employees with information regarding benefits, rules, and general information about the company. Provisions within a well-crafted and comprehensive employee handbook can also serve as legal defenses to potential claims.



Employee handbooks should be reviewed at least once a year by a qualified employment law attorney for potential changes in the law. It is important to make sure your employment policies are up to date and in compliance with the law to avoid any potential exposure from an audit or a private lawsuit. You also want to make sure your workplace policies are consistent with your current business practices. Oftentimes, I review employee handbooks that are copied from the Internet and they include policies that have no bearing on the company. This is a risky practice as certain provisions may add responsibilities to your company that are either not necessary or applicable.

Many are now aware that on Jan. 5, a Circuit Court judge in Miami-Dade County (Judge Sarah Zabel) lifted a stay on gay marriage, which held that Florida's ban on gay marriage was unconstitutional. This came after Judge Robert Hinkle, United States District Judge of the Northern District of Florida, entered an Order on Jan. 1, ruling that all Florida counties are required to begin issuing marriage licenses to same-sex couples beginning on January 6, 2015. Now that same-sex couples are now able to legally marry in Florida, what does that mean for employers in the State of Florida?

With the change to gay marriage in Florida, employers need to immediately revisit their company policies, particularly to the areas concerning benefits that pertain to "spouses." Depending on the size of your company, there are circumstances where you are required to offer

certain benefits (e.g. leave under the Family Medical Leave Act) and others where you voluntarily offer benefits (e.g. paid time off, 401k). Under either scenario, you need to make sure that all benefits offered to opposite sex spouses are also available to legally married same-sex spouses in order to avoid a potential dispute from your employees.

Currently, there are no federal or state laws that prohibit sexual orientation discrimination, but that is likely to change soon. There is a bill before the Florida Legislature that would put a statewide ban on sexual orientation discrimination. Additionally, at the federal level, the Employment Non-Discrimination Act passed the Senate in 2013, but did not make it through the House of Representatives. The Act sought to prohibit discrimination on the basis of sexual orientation and gender identity in the workplace. I would not be surprised if a comparable bill picked up greater steam among the House of Representatives next time around.

Additionally, employers need to be aware of a claim for “marital status” discrimination, which is prohibited under Florida law. Now that same-sex couples can legally marry, they may be able to raise a claim for marital status discrimination if they feel they have been discriminated against based on their marriage.

There are ways to address these items in your employee handbook. Have your employee handbook reviewed and updated now before the auditor comes or the lawsuit happens.

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