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## Gay marriage ruling will impact Michigan employers



From family leave policies to survivor benefits, legalized same-sex marriage will affect how Michigan employers offer health care and workplace benefits to workers.

Yet the full financial and legal ramifications of Friday's U.S. Supreme Court decision on businesses are not yet known.

Experts say that resolving all the new questions could take months or years. It may even require another trip or two to the nation's highest court.

"You are going to have organizations scrambling to adopt policies and put benefit packages together," said employment law attorney Ron Sollish of Maddin, Hauser, Roth and Heller in Southfield. "Some of these things don't even exist yet."

Sollish's firm is researching how same-sex marriages will change workplace policies on matters such as family leave rights, dependent coverage under health care plans and survivor benefits under retirement plans.

The ruling on Friday does mean that Michigan businesses with regular health insurance plans must start extending coverage to same-sex spouses, according to Rebecca McLaughlan, a vice president at the Marsh McLennan, an insurance broker and consulting firm with an office in Troy.

These health care benefits will no longer be subject to either federal or state income taxes. (Benefits have been exempt from federal income tax since a 2013 U.S. Supreme Court case.) But not all questions are settled.

Professor Julian Davis Mortenson of the University of Michigan Law School said that under federal law, it is still a matter of dispute whether companies can legally discriminate based on a person's sexual orientation.

"There will continue to be lots of uncertainty around whether or not discrimination on the basis of sexual orientation is permissible," he said.

That "question mark" will likely remain until either Congress passes a law that protects sexual orientation from discrimination, or the Supreme Court rules on the matter in a future case.

He said that an employer could try to assert a right to deny workplace benefits to same-sex partners on religious grounds, in a similar way to how Hobby Lobby successfully defended its right last year to not pay for employees' birth control in a U.S. Supreme Court case.

But such a case would likely be tougher to win, Mortenson said, as it would legally be tantamount to arguing for a right to discriminate against someone because of race.

"I struggle to imagine a major corporation or even a big-ish company successfully arguing that it could, for example, discriminate on the basis of race because it viewed racial segregation as religiously mandated," he said. "So structurally, that is the same question."

Paul Roney, president of Ann Arbor-based Domino's Farms Corp., which successfully fought mandates to give contraceptive coverage, said they have yet to decide to extend health benefits to same sex spouses.

Given the competition for talented employees as well as societal pressure, it could be hard for some companies to exclude benefits to same-sex partners or risk losing good hires.

According to an analysis by Marsh McLennan, employers with self-funded insurance plans also need to extend coverage to same-sex spouses, although they are subject to different laws. The firm advises any self-insured company considering excluding same-sex couples to first obtain a legal opinion.