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The Impact of New Jersey  
Civil Union Law on  
HR, Benefits & HRIS

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**IHRIM**



# Background

- New Jersey one of a number of States to extend marriage-like rights to same-sex partners
  - Massachusetts extends actual marriage to same-sex partners (along with Belgium, Canada, the Netherlands, South Africa and Spain)
  - Connecticut, Vermont and soon New Hampshire offer civil unions
  - California, Maine, Hawaii and District of Columbia recognize domestic partnerships

# Background

- Civil Union status preceded by NJ Domestic Partnership Act
  - Effective July 12, 2004
  - Created protections for same-sex partners (and certain opposite-sex partners)
  - Required that insurers offer dependent health coverage to domestic partners on the same basis as such coverage is offered to married couples
  - Did *not* mandate that private employers offer dependent health coverage to domestic partners
  - Amended New Jersey's Law Against Discrimination to prohibit discrimination against domestic partners in employment.

## Background (cont.)

- Pivotal NJ Supreme Court case in October 2006 (Lewis v. Harris) directed NJ Legislature that denying marriage rights and benefits to committed same-sex couples violated equal protection guarantee of the State Constitution
  - Basically told to get busy and pass a law

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## Background (cont.)

- New Jersey Civil Union Act (P. L. 2006, c. 103) was enacted 12/21/2006
- Effective February 19, 2007
- “Civil union couples shall have all of the same benefits, protections and responsibilities under law, whether they derive from statute, administrative court rule, public policy, common law or any other source of civil law, as are granted to spouses in a marriage.”

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## Background (cont.)

- Civil Union may be entered into by individuals who:
  - Are not party to another civil union, domestic partnership, or marriage in NJ or other location
  - Be of the same sex
  - Be at least 18 or receive parental consent

## Background (cont.)

“Civil Union” under NJ State law

### **Equals**

Marriage, husband, wife, spouse, family, immediate family, dependent, next of kin, widow, widower, widowed or another term that denotes a marital or spousal relationship under NJ State law

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## Background (cont.)

- Benefits, protections, and responsibilities civil union partners and marital spouses have in common include laws relating to:
  - Insurance,
  - Health, and
  - Pension Benefits
- Expanded Law Against Discrimination to include discrimination based on civil union status

# Fundamental Principles of Civil Union Status

- A Spouse is a Spouse is a Spouse is a Civil Union partner\*
  - Must obtain civil union license
  - “Solemnize” civil union before a civil or religious official
  - Transmit license to State
  - Receive certificate of civil union
  - Must divorce to end civil union

\*almost—apologies to Gertrude Stein

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# Fundamental Principles of Civil Union Status (cont.)

- Civil union status equivalent to a marital spouse for:
  - NJ income tax filing purposes
  - NJ-regulated insurance policies such as medical, dental, life, disability, vision etc.
  - State tax-free medical benefits
  - NJ Family Leave Act
  - HR policies and procedures

# The Problem: Federal Law

- Two federal laws create a big mess in NJ (and other States) for civil unions and employer plans:
  - ERISA
    - *Generally preempts state laws impacting employee benefit plans, particularly for self-insured benefits*
  - Defense of Marriage Act
    - *Spouse “only refers to a person of the opposite sex who is a husband or a wife”*
      - Drives federal taxation issues
      - Drives “spouse” for federal statutes

# Prior Decisions Matter

- Does ER currently recognize domestic partners in NJ?
  - DP status superseded by civil union rules except for opposite sex couples age 62 or older
  - If DP status a stopgap until state/federal law catches up, should NJ ER drop DP status and require civil union status to receive H&W benefits?

# Two Employers/Two Different Results

- Employer with fully insured H&W plans:
  - Will have to recognize civil unions for benefits, regardless of HR policy preference (which may or may not be different than prior NJ DP status response)
  - No NJ taxation for value of benefits (at state level, truly a “spouse is a spouse is a spouse is a CU partner”)
- Employer with self-insured H&W plans:
  - Choice whether or if to comply with NJ CU rules or use ERISA and DOMA as a shield

## Two Employers/Two Different Results (cont.)

- Both employers must treat value of any H&W benefits delivered to NJ Civil Union partner as federal taxable income to employee
  - Unless CU partner federal tax dependent under Code section 152
  - Should not allow FSA/HRA/HSA reimbursement of CU partner benefits
  - Not treated as taxable income at NJ state level

# HR/Payroll/HRIS Steps

- Decide whether recognizing NJ Civil Union status mandatory, desirable but not required, or undesirable
- Decide how to handle any current NJ domestic partners
- Requires partnership between HR/HRIS/Payroll to reach these conclusions and balance ability to handle HRIS/payroll issues with HR objectives

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## HR/Payroll/HRIS Steps (cont.)

- After required/voluntary decisions in place, then any Civil Union status requires:
  - Revising prior DP processes and indicators (if any)
  - Building enrollment process/HRIS to capture CU status and to process “proof” requirements (if any)
  - Determining if CU is tax dependent
  - Building bifurcated payroll reporting/withholding routines that run off of CU/DP indicators and capture federal income tax value of CU/DP benefits (due to DOMA refusal to recognize non-tax dependent CU/DP as a spouse)
  - Determining value of CU/DP benefits for federal taxation purposes (COBRA minus 2% a good start)

## HR/Payroll/HRIS Steps (cont.)

- Determining (for non-adopters) which H&W benefits do not enjoy ERISA preemption protection and must be offered to CU partners
  - *At least FMLA policies, bereavement, and sick leave in NJ*
  - *Does this practically require collecting CU status for all employers?*
- Determine whether new CU is a change in status
- Revising policies, enrollment material, SPDs, H&W plan documents ASAP (or, at least before request due to concerns about NJ Law Against Discrimination concerns for non-adopters)

## HR/Payroll/HRIS Steps (cont.)

- All built on current NJ taxation foundation that does not recognize cafeteria plans for state taxation purposes
  - This may be news to some NJ employers and complicate the Civil Union HRIS/payroll process
  - Practically means that pre-tax premiums don't work in NJ for *ANY* medical, etc. coverage regardless of whether employee, spouse, DP, or CU

# NJ State Resources

- Take all with a grain of salt—usually focused on NJ State employers, or employers subject to NJ insurance laws:
  - <http://www.state.nj.us/treasury/pensions/civil-unions.htm>
  - <http://www.state.nj.us/treasury/taxation/index.html?civilunionact.htm~mainFrame>
  - [http://www.state.nj.us/health/vital/civilunion\\_apply.shtml](http://www.state.nj.us/health/vital/civilunion_apply.shtml)

Questions?

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# Thanks!



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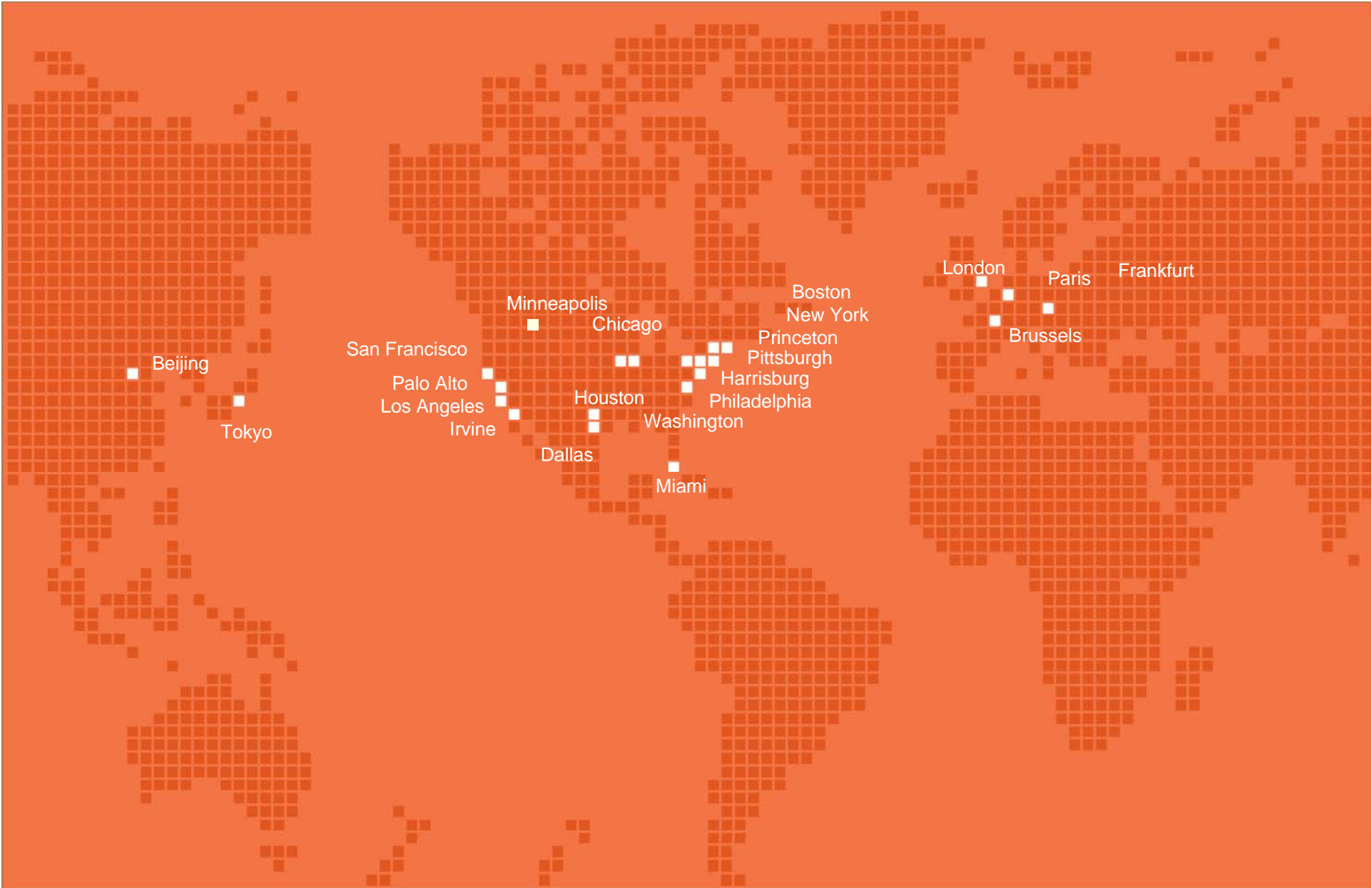
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- Andy is Of Counsel in the Firm's Employee Benefits Practice. Andy's practice concentrates on the representation of corporate clients in the context of health and welfare benefits, HIPAA, COBRA, HSAs and HRAs. Andy is the Co-Chair of the Firm's Health and Welfare practice. Andy is also a member of the Firm's outsourcing practice, where he applies his background as the former lead attorney in Hewitt Associate's outsourcing group.

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