

FROM THE EMPLOYER'S PERSPECTIVE:

Non-recognition and a chaotic, muddled patchwork of marriage equality laws have negative impacts on employers – on a federal, state, and organizational level.

○ **FEDERAL LEVEL**

- The Federal Defense of Marriage Act (DOMA) means that although some states have legalized same-sex marriage, many other U.S. states will *not* recognize those marriages as valid
- Employers are inhibited in their ability to effectively manage human capital, as employees may avoid or even refuse promotion or transfer opportunities that require their families to relocate to states that lack critical protections and/or recognition of their marriages
- Employers actually pay *more* in payroll taxes when they try to extend benefits to their employees who are in same sex marriages or domestic partnerships because those benefits are viewed by the government as “imputed income”¹
 - Current taxation of domestic partner benefits costs American families and their employers \$235 million in additional income and payroll taxes each year²

○ **STATE LEVEL**

- Uncertainty in a corporation can be inefficient and costly. Varying state laws and regulations regarding the status of same-sex couples who are married or in domestic partnerships increase the complexity of corporate salary and benefit policies and can put multi-state and multinational companies in legal limbo regarding appropriate treatment of these couples³
- Multi-state employers may face different laws regarding treatment of their LGBT employees in every state they have jurisdictions. Figuring out how to sort through this patchwork of legal rights and laws is exhausting for both the employer and the employee.
- Corporations with headquarters in states that lack marriage equality rights will suffer from a decreased ability to recruit and retain talent.
 - A recent Massachusetts study showed that creative class individuals in same-sex couples were 2.5 times more likely to move into the state *because* of marriage equality⁴
 - Marriage equality and its benefits reduce turnover and act as a salient indicator to *all* employees that the company is a diverse and secure place to work for

○ **ORGANIZATIONAL LEVEL**

- Even companies with the best of intentions regarding full diversity and inclusion are forced by external means to be inconsistent and inequitable in their practices.
- Human Resources Staff in a corporation are forced to take on a dramatically increased workload and financial investment in order to analyze and develop ways to manage equitable compensation and benefits for employees, often on a case-by-case basis.
- Marriage Equality is the one of the most visible and important issues to the LGBT community, and it is an issue that the LGBT consumer population is following closely. Being a leader for marriage equality is crucial to building consumer loyalty, competitive edge, and reputation within the community.

Businesses can make a difference. In Vermont, it was the business leaders who urged the legislature to allow same-sex marriage in order to remove the two-tier system that was originally in place. Of the 268 Fortune 500 Companies rated in the Corporate Equality Index, 123 received perfect scores under LGBT policy and benefit issues, with the average rating of Fortune 500 companies at 86 percent. In an environment of change, being a leader for equality is crucial for a corporation to remain competitive.

¹ <http://www.law.ucla.edu/williamsinstitute/publications/UnequalTaxesOnEqualBenefits.pdf>

² http://www.law.ucla.edu/williamsinstitute/pdf/Website_TaxPiece.pdf

³ <http://www.law.ucla.edu/williamsinstitute/publications/MarriageEqualityontheEconomy.pdf>

⁴ http://www.law.ucla.edu/williamsinstitute/pdf/MA_CreativeClass.pdf

FROM THE EMPLOYEE'S PERSPECTIVE:

○ THE FINANCIAL IMPACT

- Married same-sex couples suffer from taxation on their health insurance benefits, lack of protection from estate taxes, and a lack of options in filing income taxes. In addition, married same-sex couples are treated differently under the Social Security Administration, receiving reduced social security survivor and spousal benefits than opposite-sex married couples.
 - Employees with same sex marriages or domestic partners pay an average of \$1070 per year more in taxes than married heterosexual employees with the same coverage⁵
- LGBT employees in same-sex marriages or domestic partnerships are much more likely to be uninsured than married heterosexual couples, simply because many employer provided plans do not cover the same-sex partner of an employee.¹ Often times, what this means is that employees in same-sex marriages or domestic partnerships are forced to pay drastically higher rates for insurance coverage than opposite-sex married couples.

○ THE LEGAL IMPACT

- Even if employees are legally married to same sex partners, they still face a patchwork of state laws and a federal DOMA law that bans recognition of their union and overrides varying corporate benefit policies, immensely complicating the financial and legal situations for those same-sex couples who are married.
- Employees in same-sex marriages or domestic partnerships who are parents face additional unique risks. Many states don't guarantee the right for second-parent adoption, creating situations where parents can literally become *legal strangers* to their children.
- Domestic partnerships and civil unions are fundamentally unequal to marriage. In fact, they come with 1,138 less rights and protections than marriage.⁶
- Same-sex married couples who later relocate to a different state are even denied basic legal rights that heterosexual married couples enjoy, including the often overlooked right to obtain a divorce.
- Employees have to spend time and energy conducting extensive research on the equity climate of a locale before accepting a job or even considering a transfer or promotion elsewhere.

○ THE IMPACT ON HEALTH

- From filing separate tax returns to figuring out ways to pay for health insurance, same-sex couples who are married or in domestic partnerships repeatedly face barriers to equality that begin to take a toll on their emotions and their physical health .
- A system of "separate but equal" may actually make employees *feel* unequal and less valued not only in the workplace, but also in society overall.
- Studies show that employees who are more "out" and comfortable in their working environments are more productive, healthy, and committed to their workplaces. The current system of marriage equality laws puts a severe strain on an employee's personal and professional lives – rendering employees less productive, happy, and healthy.⁷
- As there is little to no current data, except anecdotally, regarding the health and well-being of LGBT Americans, Congresswoman Tammy Baldwin recently introduced legislation (The Health Data Collection Improvement Act – HR 6109) to collect voluntary data on sexual orientation and gender identity and expression.

⁵ http://www.law.ucla.edu/williamsinstitute/pdf/Website_TaxPiece.pdf

⁶ <http://www.hrc.org/issues/5585.htm>

⁷ <http://www.law.ucla.edu/williamsinstitute/publications/MarriageEqualityontheEconomy.pdf>