In Order to Form a More Perfect 'Civil Union'

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This year the Colorado Legislature passed, and Gov. John Hickenlooper signed into law, significant legislation related to domestic relations. As of May 1, Colorado has added Article 15 to Title 14 of the Colorado Revised Statutes, otherwise known as the "Colorado Civil Union Act."

The underlying legislation, Senate Bill 13-011, also brings about changes to numerous other provisions within the Colorado Revised Statutes. There is not room in this column to cover the full extent of the affected statutes; rather, the intent is to describe the main purpose of the Act, some areas in particular where Colorado businesses may be affected, and some areas where the Act remains in conflict with federal law and, therefore, may have mixed results for Colorado residents.

The purpose of the legislation, in essence, is to create a non-marriage parallel to the provisions of the Uniform Marriage Act. In the Legislative Declaration for the Act, the Legislature stated, "the public policy of this state … recognizes only the union of one man and one woman as a marriage. The General Assembly declares that the purpose of this article is to provide eligible couples the opportunity to obtain the benefits, protections and responsibilities afforded by Colorado law to spouses consistent with the principles of equality under law and religious freedom embodied in both the United States Constitution and the Constitution of this state."

The Act defines a "civil union" as "a relationship established by two eligible persons pursuant to this article that entitles them to receive the benefits and protections and be subject to the responsibilities of spouses." Eligibility requirements are similar to those for marriage. Creation of a civil union requires that the involved parties obtain a "Civil Union Certificate" certifying "that the persons named in the Certificate have established a Civil Union in this State in compliance with this Article."

Through the Act, a "party to a Civil Union has the rights, benefits, protections, duties, obligations, responsibilities, and other incidents under law as are granted to or imposed upon spouses, whether (they) derive from statute, administrative or court rule, policy, common law, or any other source of law…. A party to a Civil Union is included in any definition or use of the terms 'Dependent,' 'Family,' 'Heir,' 'Immediate Family,' 'Next of Kin,' 'Spouse' and any other term that denotes the familial or spousal relationship, as those terms are used throughout the Colorado Revised Statutes."

For Colorado employers, perhaps the area where the Act will have the greatest effect is in the area of employee benefits. The Act expressly specifies that areas where parties to a civil union will be covered include, but are not limited to, workers' compensation benefits, unemployment benefits, family leave benefits (particularly for state employees), and, for plans issued, delivered, or renewed on or after Jan. 1, insurance coverage provided by a health coverage plan, such that a party to a civil union may be covered as a dependent.

There are, however, areas where the Act remains in conflict with federal laws and therefore may be limited in its effects. One such area is family and medical leave, and another area involves income taxes.

Per the U.S. Department of Labor, the federal Family and Medical Leave Act (FMLA) "entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and

medical reasons, with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave." The FMLA permits eligible employees to take up to 12 workweeks of leave in a 12-month period, including for the purpose of caring for an employee's spouse with a serious health condition.

According to the Labor Department, spouse "means a husband or wife as defined or recognized under state law, including 'common law' marriage in states where it is recognized. However, the federal definitions of 'marriage' and 'spouse' as set forth in the Defense of Marriage Act (DOMA) apply to the FMLA and therefore FMLA leave may only be taken to care for a spouse of the opposite sex."

Similarly, regarding income taxes, the Act recognizes that "Colorado income tax filings are tied to the federal income tax form by requiring taxpayers to pay a percentage of their federal taxable income," and that "current federal law prohibits the filing of a joint income tax return by parties who are not considered legally married under federal law" (meaning DOMA). As such, the General Assembly declared that, for now, "this Article shall not be construed to permit the filing of a joint State income tax return by the parties to a Civil Union."

This is new territory for Colorado residents, as well as for Colorado attorneys and judges who undoubtedly will be called upon to interpret and enforce the provisions of the Act. It is likely that we'll be learning our way through the myriad potential effects of the Act for years to come.

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