



STATE OF WISCONSIN
Department of Employee Trust Funds
Robert J. Conlin
SECRETARY

801 W Badger Road
PO Box 7931
Madison WI 53707-7931

1-877-533-5020 (toll free)
Fax 608-267-4549
etf.wi.gov

CORRESPONDENCE MEMORANDUM

DATE: November 6, 2014

TO: Employee Trust Funds Board
Teachers Retirement Board
Wisconsin Retirement Board

FROM: Dan Hayes, Attorney

SUBJECT: Status of Court Decision on Wisconsin's Same-Sex Marriage Prohibition

This memo is for informational purposes only. No Board action is required.

This memo provides an update on the federal lawsuit challenging Wisconsin's constitutional prohibition on same-sex marriage.

The U.S. Supreme Court denied review of the *Wolf v. Walker* case on October 6, 2014. This is the case in which the U.S. District Court for the Western District of Wisconsin and the United States Court of Appeals for the Seventh Circuit ruled unconstitutional the provision in the Wisconsin Constitution that recognizes only opposite-sex marriages. As a result, same-sex marriage is now legal and recognized in Wisconsin.

Shortly after the U.S. Supreme Court decided not to hear the case, the Wisconsin Attorney General advised state agencies to recognize marriage licenses issued in the state from June 6 through June 13, 2014. This is the period after the District Court struck down the marriage amendment and before the court issued a stay of that decision. The State of Wisconsin now recognizes marriages performed in Wisconsin during that week in June and on or after October 6, 2014, as well as marriages validly performed in other jurisdictions regardless of the date.

In accordance with these legal developments and advice from the Attorney General, the Department of Employee Trust Funds now treats validly married same-sex couples in the same manner as validly married opposite-sex couples for all the benefit programs it administers. More detail may be found in a Frequently Asked Questions document on ETF's website, a copy of which is attached to this memo.

Staff will be available at the December 11, 2014, Board meeting to answer questions.

Reviewed and approved by Robert J. Conlin, Secretary

Electronically signed 11/12/14

Board	Mtg Date	Item #
JM	12.11.14	6F

Legalization of Same-Sex Marriage in Wisconsin; Information for Members and Employers

On October 6, 2014, the U.S. Supreme Court denied review of the *Wolf v. Walker* case. This is the case in which the U.S. District Court for the Western District of Wisconsin and the Seventh Circuit Court of Appeals ruled unconstitutional the provision in the Wisconsin Constitution (art. XIII, § 13) that recognizes only opposite-sex couples' marriages. As a result, same-sex marriage is now legal and recognized in Wisconsin.

ETF has compiled the below questions and answers about the effect on ETF-administered benefit programs to assist members and employers.

General Questions

- 1. Based on this Supreme Court Decision, what is the effective date for which the state of Wisconsin recognizes same-sex marriages?**

October 6, 2014.

- 2. Will same-sex marriages licensed in Wisconsin between the decision by the Federal District Court on June 6, 2014, and the subsequent stay of that decision on June 13, 2014, receive an enrollment opportunity in health and life insurance benefits?**

Yes. The Attorney General has advised state agencies that, assuming all other provisions of Chapter 765 were met, the state should treat as valid a same-sex marriage solemnized and contracted in Wisconsin after receipt of a license issued by the County Clerk during these times: Starting June 6, 2014 (at 3:22 p.m.) until June 13, 2014 (at 5:20 p.m.); Starting again at 9:00 a.m. on October 6, 2014 and continuing until further court action (if any). Members/subscribers will receive a 30-day enrollment opportunity due to this qualifying event. Members/subscribers will have 30 days from October 15, 2014 (ETF's effective date of notification) to make an application for family coverage, or to add a spouse to existing coverage.

- 3. If a legal marriage occurred in another state or country, does that generate an enrollment opportunity?**

Yes. Legal same-sex marriages that occurred in another state or country prior to October 6, 2014, will receive a 30-day enrollment opportunity due to this qualifying event. In order to give members the benefit of a full 30-day enrollment opportunity, members/subscribers will have 30 days from October 15, 2014 (ETF's effective date of notification) to make application for family coverage, or to add their spouse to existing coverage.

4. **When is the health insurance coverage effective?**

If the member/subscriber submits an application to their employer by the end of business on November 14, 2014 (30 days from ETF's effective date of notification), health insurance coverage will be effective as of the event date, October 6, 2014.

5. **What happens if the member/subscriber misses this enrollment opportunity?**

The member/subscriber will be required to wait until another qualifying event occurs (e.g., birth, adoption, etc.) or the next It's Your Choice Open Enrollment period.

6. **How will the issue of imputed income be handled and by whom?**

Members/subscribers should contact their employer's payroll and benefits representative. Employers should contact their tax advisor. The Department of Revenue has [frequently asked questions](#) on tax-related issues, including imputed income, which may be helpful.

7. **What documentation will be required demonstrating proof of marriage?**

To change marital status on a contract or to add a spouse, no documentation (e.g., a marriage certificate) will be required other than a [Health Insurance Application/Change Form](#) (ET-2301) or a [myETF Benefits](#) request. However, employers may request additional documentation related to questions on eligibility.

8. **If an employee marries their domestic partner, is an [Affidavit of Termination of Domestic Partnership](#) (ET-2372) form required?**

No. If ETF does not receive the *Affidavit of Termination of Domestic Partnership* (ET-2372) form and the person only submits a health insurance change, this is sufficient.

9. **Must a member/subscriber, who has a family contract covering their domestic partner and any dependents of their domestic partner, file an application to change their marital status if they have previously married their domestic partner?**

Yes. The member/subscriber must file a [Health Insurance Application/Change Form](#) (ET-2301) with their employer (or with ETF, if they are retired). Employers must submit this application to ETF for entry into the myETF Benefits system. A member/subscriber or employer cannot update the relationship of a dependent in myETF Benefits from domestic partner or dependent of a domestic partner to spouse and stepchild. ETF is reaching out to those members/subscribers, who are currently covering their domestic partner, by letter to inform them on how to update their marital status and relationship.

10. Does marriage provide an enrollment opportunity for spouse and dependent coverage for life insurance?

Yes it does, provided this is the first time an insured member had a spouse, domestic partner or child to insure. Due to this family status change event the member/subscriber can also elect to add one additional level of coverage. The member has 30 days from the earliest date of these events to file a [Life Insurance Application/Cancellation/Refusal](#) (ET-2304) form with their employer. However, members/subscribers, who previously filed an [Affidavit of Domestic Partnership](#) (ET-2371) form and did not elect spouse and dependent coverage at that time, cannot elect spouse and dependent coverage for life insurance due to the domestic partner's relationship status changing to spouse.

11. Can a member/subscriber file a [Health Insurance Application/Change Form](#) (ET-2301) during the current It's Your Choice Open Enrollment period (October 6-31, 2014) and add their spouse effective January 1, 2015, instead of adding them effective October 6, 2014?

Yes. When members/subscribers file an application, they need to indicate "It's Your Choice" as the reason for adding a dependent or adding coverage. (See Q&A #2 for information on adding a dependent as of October 6, 2014.)

12. As of October 6, 2014, if a Wisconsin Retirement System member is in a same-sex marriage, does that have any impact on their WRS benefits?

As of October 6, 2014, for WRS purposes, a same-sex spouse would be treated the same as an opposite-sex spouse. This includes changes to health insurance eligibility, retirement options and death benefits. Please contact ETF with specific questions.

13. Does marriage provide an open enrollment opportunity for life insurance for the insured member under the family status change provision of the contract?

Yes it does, unless the insured member previously took advantage of an open enrollment opportunity due to an establishment of a domestic partnership with the person they have married. Changing the relationship with the same person from domestic partnership to marriage does not provide an open enrollment opportunity for the insured member to increase coverage.

14. Does marriage provide an open enrollment opportunity for life insurance for the uninsured member who initially waived or declined coverage upon hire?

Yes. Marriage provides an open enrollment opportunity if a member who initially waived or declined coverage upon hire later enters into a domestic partnership or marriage. The open enrollment opportunity would be based on a change in family status. Please note, however, there would be no open enrollment opportunity if a member who was in a domestic partnership at the time the member waived or declined coverage later married his or her domestic partner.