

ALI-ABA Audio Seminar

**Same-Sex Marriage and Employee Benefit Plans:
What Your Clients Need to Know**

July 8, 2009

Telephone Seminar/Audio Webcast

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What Your Clients Need to Know**

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A PROFESSIONAL CORPORATION

Same-Sex Marriage and Employee Benefits: An Update

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The Current Dilemma

- ★ Most employee benefit plans are subject to the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code (the “Code”)
 - > As a general rule, governmental and church plans are not subject to ERISA
- ★ Neither ERISA nor the Code recognize same-sex marriages or domestic partnerships
- ★ Connecticut, Iowa, Vermont, Maine, Massachusetts, and New Hampshire have legalized same-sex marriages
- ★ California recognizes the 18,000+ same-sex marriages that took place between June 17, 2008 and November 4, 2008
- ★ How can an employer provide employee benefits to same-sex couples when state law conflicts with federal law?

Agenda

- ◆ Status of same-sex marriage in the US and elsewhere
- ◆ Current Same-sex marriage developments
- ◆ Same-sex marriage and pension and/or 401(k) plans
- ◆ Same-sex marriage and health and welfare plans
- ◆ Same-sex marriage and non-ERISA plans

California Same-Sex Marriage History

- ★ February 12, 2004 – San Francisco Mayor Newsom and San Francisco County Clerk begin issuing marriage licenses to same-sex couples
- ★ February 13-20, 2004 – Anti-gay groups (Proposition 22 Legal Defense and Education Fund (“the Fund”) and Campaign for California Families (“the Campaign”)) file suits for writ of mandate in Superior Court seeking immediate relief
 - > Hearings are held by Judges Warren and Quidachay
 - > Immediate relief is denied due to lack of irreparable harm
 - > Hearing on OSC held on March 29, 2004