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MARRIAGE IS A WORKER'S ISSUE (Rhode Island)

Many people understand that ending discrimination against same-sex couples in marriage is a **civil rights issue**. It's about supporting equal treatment under the law for gays and lesbians.

Many people also agree that civil marriage for gay people would **help children and their families** -- civil marriage as a legal structure helps to stabilize families and unquestionably helps children when the law provides their families with innumerable benefits (hospital visitation rights, rights to make medical decisions, rights to Family and Medical Leave, rights to family health insurance, access to school records, etc).

People are beginning to understand that marriage equality is also a Worker's issue.

Civil marriage provides families with **over 1400 rights, protections and responsibilities**. Many of these benefits are **EMPLOYMENT** and **family benefits** like:

- Access to **Worker's Compensation** protections for the family of a worker injured on the job
- Access to **Social Security** protections upon the death, disability or retirement of a spouse
- Access to **ERISA** protections (like the ability to leave a pension to your spouse)
[ERISA = Employee Retirement Income Security Act]
- Access to **Family & Medical Leave** protections to care for a new child or a sick or injured family member
- Access to **COBRA** (so spouses don't immediately lose health insurance when one is laid off)
- Access to hundreds of other critically important employment benefits and protections.

While Rhode Island does offer some domestic partnership benefits for state employees willing to certify that their relationship meets certain criteria, this small handful of protections comes nowhere near the wide range of protections provided to workers and their spouses. Further, aside from similar benefits obtained through collective bargaining, there is nothing at present requiring private employers to respect the partners and children of their gay and lesbian employees in any way at all. As discussed in more detail below, marriage confers **automatic protections** and responsibilities that are now essential for sustaining families. Wages are not the only bread and butter issue. Marriage, too, decisively affects a worker's ability to adequately protect herself and her family.

Worker's Compensation Protections -- Without Marriage

- A same-sex partner is *not* recognized as a worker's dependent for purposes of the workers' compensation system, which is intended to assist an employee and an employee's family if they were wholly or partially dependent on the employee at the time of the employee's job related injury.¹
- A surviving same-sex partner would *not* be eligible to receive any death benefits under Workers' Compensation law if their partner died because of an injury sustained on the job.²
- An injured worker with a same-sex partner is *not* eligible for increased weekly payments to care for his or her family.³

Social Security Protections -- Without Marriage

- Under social security law, if a covered worker is retired, disabled or dies, his or her same-sex partner *cannot* claim benefits for the benefit of himself or herself and any children based on the worker's work credits.⁴
- A surviving same-sex partner *cannot* claim the one-time death benefit of \$255 provided by social security for a surviving spouse.⁵
- The same-sex partner of a worker who is disabled and eligible for social security disability benefits is *not* entitled to receive additional benefits if he or she is raising children under age 16 or if the disabled worker is at least age 62.
- A same-sex partner has *no access* to protections under social security law for families in which one person was a lower earner because of other familial responsibilities, such as allowing the lower earner to start collecting on the higher earner's social security at the lower age of 62, or allowing increased benefits based on the earnings of the higher earner.⁶

Protections Regarding Retirement -- Without Marriage

- A gay or lesbian employee does *not* have the option available under many private pension plans (especially defined benefit plans) to select a "joint and survivor annuity," which means that in exchange for taking a smaller amount during his or her life, the surviving partner would be able to still collect on the pension even after the worker has died. This is a matter of federal law.
- A same-sex partner does *not* have the right to sign off if his or her partner decides to name someone other than that partner as the beneficiary of a pension. A same-sex partner also does *not* have a right equivalent to that of a different-sex spouse to sign off on their partner's designation of another person for survivor benefits.
- A same-sex partner does *not* have the ability to waive his or her partner's receipt of a pension in a form other than a qualified joint and survivor annuity. For spouses, this is required under the Federal Employee Retirement Income Security Act (ERISA), which trumps all state laws in this regard.⁷

¹ R.I.G.L. §28-33-13 - 15.

² R.I.G.L. § 28-33-12.

³ R.I.G.L. § 28-33-17.

⁴ 42 U.S.C. § 402 (b-f).

⁵ 42 U.S.C. § 402 (i).

⁶ See 42 U.S.C. § 402 (e), (f).

⁷ ERISA § 205(d)(1).

Bereavement and Family & Medical Leave -- Without Marriage

- In most workplaces, a gay or lesbian employee will *not* be able to take bereavement leave for the death of his or her partner or a member of the partner's family.
- Most gay or lesbian employees are *not* entitled to take time off of work to care for a seriously ill partner, that partner's parent, or a child born to or adopted by that partner, even if they live in the same household, under Rhode Island's Parental and Family Medical Leave Act.⁸
- The Federal Family and Medical Leave Act does *not* allow a partner in a same-sex couple the time off granted to a spouse of up to twelve weeks off every twelve months to care for his or her partner or the partner's parent, even if they are all living in the same household (a recent change allows ANYONE who is a caregiver to a child the right to FMLA leave to care for that child).⁹

Protections Related To Death, Illness Or Injury -- Without Marriage

- A same-sex partner has *no* standing to bring wrongful death or loss of consortium actions or recover from those actions if his or her partner is injured or killed due to the wrongful acts of another person.¹⁰
- A same-sex partner has no right to inherit any portion of his or her deceased partner's estate or personal belongings without a will.¹¹
- A same-sex partner is *not* entitled to receive any of the financial protections available to a spouse immediately after his or her partner's death, including financial support while the estate is being settled, a tax credit, and a deduction from estate taxes.¹²

Access to Insurance -- Without Marriage

- A lesbian or gay couple *cannot* purchase a joint policy of health insurance on the open market. No state law requires insurance companies offering policies of accident and sickness insurance to issue policies to same-sex couples.¹³
- A same-sex partner *may not be* considered an employee's dependent for purposes of health insurance if the employee works for a small business.¹⁴
- Most surviving same-sex partners have *no ability* to continue to receive insurance coverage under a deceased spouse health insurance plan.¹⁵
- A same-sex partner is *not* entitled to continued insurance benefits under a former partner's insurance plan or to receive reimbursement for any fees paid for covered medical costs.¹⁶
- When an employer does provide insurance benefits to a gay or lesbian employee for his or her "domestic partner," those benefits are taxable to the employee under federal law, even though they are a form of compensation, unless the partner qualifies as a tax dependent. Also, the employer must pay social security and unemployment taxes on the value of the benefit.¹⁷ Spousal benefits are exempt from taxation.
- A same-sex partner is *not* considered a member of his or her partner's family for purposes of obtaining a life insurance policy for two or more members of a family.¹⁸
- A same-sex couple *cannot* receive insurance coverage for diagnosis and treatment of infertility.¹⁹

⁸ R.I.G.L. § 28-48-1 et seq..

⁹ 29 U.S.C. §§ 2611(13) (definition); 2612(1) (eligibility for benefits).

¹⁰ R.I.G.L. §§ 10-7-1 to 10-7-14.

¹¹ R.I.G.L. §§ 33-1-5; 33-1-6; 33-1-10; 33-10-1 - 4; 33-25-2.

¹² R.I.G.L. §§ 33-10-3; 44-30-26; 44-22-1.

¹³ R.I.G.L. § 27-18-2..

¹⁴ R.I.G.L. § 27-50-3

¹⁵ See e.g. . R.I.G.L. § 27-19.1-1; See also 29 U.S.C. §§ 1161, 1163 (COBRA).

¹⁶ R.I.G.L. § 27-20.4-1.

¹⁷ R.I.G.L. § 44-30-12(c)(6); 26 U.S.C. § 106.

¹⁸ R.I.G.L. § 27-4.8-4.

¹⁹ R.I.G.L. §§ 27-18-30; 27-19-23; 27-20-20; 27-41-33.

Other Legal Protections -- Without Marriage:

- A same-sex partner has *no access* to wage assignment protections, and thus his or her partner may assign his or her wages without his or her consent.²⁰
- An unemployed worker will *not* be able to obtain unemployment dependency benefits for a child born to or adopted by his or her same-sex partner when the unemployed worker is not the legal parent.²¹
- In the case that a same-sex relationship fails, couples do *not* have access to the divorce system to fairly allocate the assets acquired during the relationship and in some cases provide for spousal support.²²
- A surviving same-sex partner of a veteran killed in action is *not* entitled to receive the support from the “dependent’s education fund” to attend an institution of higher learning or a school of technical/professional learning. If the deceased partner is not the legal parent of that couple’s child, the child will also not be eligible to receive this benefit.²³
- A surviving same-sex partner of certain professionals, including a licensed insurance producer,²⁴ a licensed commercial fisherman,²⁵ or a funeral director,²⁶ will *not* be entitled to carry on the deceased partner’s business, whether temporarily or permanently.

Married couples have access to these protections in times of vulnerability, as well as to address more mundane but practical needs and to protect the family’s security as they age. While gay and lesbian families can provide limited protections for themselves by creating wills, partnership agreements, or other documents, so can everyone else, and no one considers these a substitute for marriage. The vast majority of legal protections and obligations simply cannot be contracted. Only when gay and lesbian workers can marry will they receive the level of protection that they need and deserve for their families -- the same legal protection that their married, heterosexual colleagues presently enjoy.

²⁰ R.I.G.L. §§ 19-14.1-7; 19-14.2-7.

²¹ R.I. G.L. § 28-44-6(b).

²² R.I.G.L. § 15-5-1 et. Seq.; R.I.G.L. § 15-5-16.1 (equitable property division); R.I.G.L. § 15-5-16(a)-(c) (alimony). *See also Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007) (denying jurisdiction of Family Court over divorce action between same-sex couple married in another jurisdiction).

²³ R.I.G.L. § 30-30-1.

²⁴ R.I.G.L. § 27-2.4-13.

²⁵ R.I.G.L. § 20-2.1-5.

²⁶ R.I.G.L. § 5-33.2-1.