

Attorney General Opines that Proposal 2 Prohibits State and Local Government Entities from Providing Domestic Partner Benefits for Employees

March 16, 2005

Attorney General Mike Cox issued an opinion today finding that the November 2004 passage of Proposal 2, amending the Michigan Constitution, prevents state and local government agencies - but not private employers - from providing benefits to same-sex partners. Proposal 2, now codified as §25 of the Michigan Constitution, states:

To secure and preserve the benefits of marriage for our society and for future generations of children, the union of one man and one woman in marriage shall be the only agreement recognized as a marriage or similar union for any purpose.

The prohibition affects benefits for domestic partners of employees including hospital/medical coverage, dental care, sick leave, funeral and critical illness leave, COBRA continuation coverage, FMLA benefits, retiree medical coverage, and pension benefits. The only exception is for employees who are receiving domestic partnership benefits pursuant to a collective bargaining agreement, personal services contract or other formal contract arrangement. Such benefits may be continued until the expiration of the agreement, provided that it was effective prior to December 18, 2004. For employees who received benefits pursuant to an employer's policies, and not a collective bargaining agreement, the Attorney General stated that the amendment prohibits the continuation of benefits past December 18, 2004, with the exception of benefits already accrued or vested, and provided that the employer gives affected employees notice of the policy change.

Until and unless there is a court decision contrary to this opinion, the Attorney General opinion is binding on state and local governmental entities. There is, however, current litigation pending that may or may not affect this opinion. We will keep you apprised of any further developments.

If you have any questions about this or any other employment practices, feel free to contact the; at (313) 496-7654, email: ; or at (313) 496-7520, email: . This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.