

KNOW YOUR RIGHTS

FREQUENTLY ASKED QUESTIONS
ABOUT NEW YORK'S
MARRIAGE EQUALITY ACT

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new law do?*

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married in New York?*



KNOW YOUR RIGHTS

Now that same-sex couples have the freedom to marry in New York, the NYCLU has compiled a guide to answer some frequently asked questions about the new law. Please note: This brief overview is not intended to provide individualized legal advice. For further information, or if you have encountered discrimination related to your marriage, contact the NYCLU by phone at (212) 607-3300 or email at mgoodman@nyclu.org.

WHAT DOES THE NEW LAW DO?

The Marriage Equality Act grants same-sex couples the freedom to marry in New York. The law states that marriage licenses cannot be denied to same-sex couples, and that no government or private entity can deny the rights, benefits or protections of marriage to same-sex couples who are legally wed. Furthermore, any state law that uses gender-specific terms to describe spousal rights and responsibilities will now be interpreted in a gender-neutral manner. Valid marriages from other states and countries with fair marriage laws will continue to be recognized in New York, and will be treated the same as in-state marriages.

HOW DO WE GET MARRIED? WHAT DO WE NEED TO DO?

First, you have to get a marriage license from any town clerk or city clerk in New York State. Both partners will need to be present to apply for the license, and it will cost \$35 in New York City and \$40 elsewhere. Identification, proof of age and other requirements can be found at the State Department of Health website. It is important to check to see which documents you are required to bring with you. If you were previously married, you will have to bring official documentation of your divorce.

Once you obtain your license, you will have to wait 24 hours before you can take the second required step—what New York calls “solemnizing” your marriage – and in some circumstances you can get a judicial waiver to avoid the 24 hour waiting period. While many solemnizations take place before family and friends in religious or secular ceremonies, there are only three legal requirements for solemnization: the presence of both parties, the presence of one witness and a valid officiant. You must solemnize your marriage within 60 days after obtaining your license; after that period, the license is no longer valid.

Helpful information regarding fees, hours and document requirements can be found at the New York City Clerk’s website, and from the State Department of Health.

DO WE HAVE TO GO TO THE CLERK’S OFFICE IN OUR PARTICULAR TOWN, CITY OR COUNTY, OR CAN WE GO TO ANY CLERK’S OFFICE IN THE STATE?

You can get a license from any clerk in the state, and you can use that license to get married anywhere in New York.

IF WE DON’T LIVE IN NEW YORK, CAN WE STILL GET MARRIED IN NEW YORK?

Yes. New York does not have any residency requirement for who can be married in the state. However, depending on where you live, you should be aware that your home state may not recognize your marriage as valid. Your New York marriage will be respected as a marriage in Massachusetts, Connecticut, Iowa, Vermont, New Hampshire and the District of Columbia. In addition, based on advisory opinions by their

attorneys general, Maryland, New Mexico and Rhode Island currently recognize the validity of same-sex marriages performed in states with fair marriage laws. Some other states, including New Jersey, California and Washington, have established partial recognition of some of the rights and benefits generally associated with out-of-state marriages. Unfortunately, most other states currently have laws, constitutional provisions or controlling appellate court decisions that deny recognition to the marriages of same-sex couples. Even in these states, however, many private parties, businesses and municipalities may choose to recognize the validity of your New York marriage. This area of the law is highly unsettled in many states. Consult an attorney with specific questions about your rights as a married couple in a state that does not have fair marriage laws.

There are some other important issues you should consider before you make the decision to wed in New York. First, New York’s divorce laws require that, in order for a New York court to have jurisdiction over a divorce, usually at least one partner must have resided in the state continuously for at least a year preceding the court action. Because many states that do not have fair marriage laws also refuse to grant divorces to same-sex couples, out-of-state couples may find themselves without a ready means to dissolve their New York marriage.

In addition, if you are in the process of adopting a child or planning to adopt a child with your partner, but you live in a jurisdiction that does not permit adoptions by same-sex couples—but does allow adoption by “single” individuals—getting married in New York could affect your ability to adopt. Finally, if you have a vulnerable immigration status, getting married in New York could have unintended negative immigration consequences. You should consult an attorney about these matters before making your marriage decision.

IF I HAVE A CIVIL UNION OR DOMESTIC PARTNERSHIP, CAN I STILL GET MARRIED IN NEW YORK?

Generally, the answer is yes. There is no legal impediment to doing so, and a valid New York marriage offers stronger protections than any civil union or domestic partnership could.

If you obtained a domestic partnership from a city or county within New York State, you should contact the government office where you registered. While domestic partnerships in New York City, for example, are automatically terminated upon marriage, for other locations you may need to follow up in some way with the registry. If you entered into a civil union or domestic partnership in another state, you should consult with an attorney to determine the effect a New York marriage will have on that status.

Remember, if you have a civil union or domestic partnership with a former partner, and you plan to marry your current partner, you most likely need to terminate or dissolve the previous legal relationship first. Not doing so could set up legal conflicts between your rights and obligations under the previous partnership and under the new marriage. Again, consult with an attorney if you have questions about how to terminate a legal relationship with a former partner.

IF WE GOT MARRIED OUTSIDE OF NEW YORK IN ANOTHER STATE OR COUNTRY, CAN WE OR SHOULD WE GET MARRIED AGAIN IN NEW YORK?

If you are already legally married to your partner in another state, the laws of New York allow you to get married again—to the same partner—in New York. But you need not do so because New York already recognizes your marriage as valid. Because complications might arise from a new marriage in New York, you should consult with an attorney before taking this step.

DO I HAVE TO CHANGE MY LAST NAME IF I GET MARRIED? CAN I AND, IF SO, HOW?

You do not have to, but one or both spouses may change their last name by entering the new name in the appropriate space provided on the marriage license. If you do change your name, you should follow up with the Social Security Administration to update them on the change, and you should change other identifying documents (driver's license, passport).

WHAT KINDS OF BENEFITS WILL I GET FROM MARRIAGE?

A marriage gives you automatic access to all the protections granted to spouses under state and local laws. State-based marriage rights include:

State tax benefits. Married same-sex couples will now be able to file joint state tax returns, take spousal deductions on state income taxes, exclude employer contributions for spousal health insurance from taxable income for state taxes, exempt property inherited from spouses from state estate tax, and receive tax benefits when transferring interests in property. However, the Defense of Marriage Act (DOMA)—the federal law that precludes the federal government from recognizing the marriages of same-sex couples—will continue to prevent same-sex couples from jointly filing their federal taxes (see below for a longer discussion of DOMA's effects).

Insurance benefits. Unfortunately, this is a somewhat complicated issue. State and municipal employees are entitled to benefits for their same-sex spouses. Likewise, any private employer that offers insurance through a state-licensed insurance agency must extend benefits to same-sex spouses on the same terms as to other married couples. Many private employers, however, offer “self-funded” health insurance that is not affected by the new law. The employers who offer “self-funded” insurance are not required to offer health insurance coverage to same-sex spouses, although they can. If your employer denies you spousal coverage, you should ask them to reconsider their position. Nothing in state or federal law prohibits them from doing so.

It is important to note that DOMA penalizes married same-sex spouses by requiring them to pay federal taxes on the value of the benefits they obtain through their spouse's employer, unlike other married couples.

Health care and family leave. Spouses enjoy special rights to make decisions related to emergency medical care for each other and to visit a spouse who is ill. Working spouses will also be entitled to family medical leave and bereavement leave.

Inheritance, property ownership and transfer rights. Beyond inheritance protections in probate court proceedings, many laws make it easier for spouses to transfer or jointly own property.

Parental rights. Both spouses will be listed as parents where a child is born to two married women. This does not apply to children born to a couple before they are married. (Married men having a child

through a surrogate will still need to follow a more complicated set of procedures which they should consult with an attorney about.) Due to inadequate protections in other states or countries that do not recognize valid marriages of same-sex couples, however, we strongly advise couples to obtain second-parent adoptions by the non-biological parent, even if both spouses are listed as parents on a birth certificate. A court-ordered adoption ensures legal respect for both spouses' parental status by the federal government and other jurisdictions that may not recognize marriages of same-sex couples. Consult an attorney for further advice.

Workers' compensation and wrongful death claims. Spouses may receive workers' compensation benefits if a spouse dies in the workplace, and they may bring a wrongful death lawsuit and related civil claims that are dependent on marital status.

Cemetery plots. Same-sex spouses have the same rights as different-sex spouses to possession, care, control and succession to ownership of, and right of interment in, a public cemetery plot.

Spousal privilege. In legal proceedings, discussions between spouses are protected from disclosure in court by asserting spousal privilege.

Family law. Spouses may utilize state and local judicial forums in proceedings relating to separation, divorce, orders of protection and the care of any children of the couple.

WHAT KINDS OF OBLIGATIONS DOES MARRIAGE ENTAIL?

Marriage establishes a number of important legal responsibilities between spouses. These include support obligations in the case of separation or divorce, liability for a spouse's debts, restrictions on your freedom to make decisions regarding property, and certain inheritance restrictions.

WHAT EFFECT WILL THE FEDERAL DEFENSE OF MARRIAGE ACT (DOMA) HAVE ON OUR MARRIAGE?

Section 3 of the 1996 federal Defense of Marriage Act (DOMA) precludes the federal government from recognizing the marriages of same-sex couples, denying same-sex spouses the more than 1,138 federal benefits, protections and responsibilities enjoyed by spouses in a different-sex marriage. Federal taxes, Social Security, immigration, veterans' benefits and many more issues are all affected by DOMA.

As a result of DOMA, same-sex couples married in New York cannot file jointly on their federal tax returns, cannot sponsor same-sex spouses for immigration purposes and cannot receive federal benefits—including Social Security, federal pensions and veterans' benefits—that other married couples enjoy. DOMA also penalizes married same-sex couples by taxing them on the value of the health insurance benefits they obtain through their spouse's employer, unlike other married couples.

DOMA is unconstitutional. On November 9, 2010, the NYCLU, the ACLU, and the law firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, filed suit to challenge the constitutionality of DOMA in New York (visit www.nyclu.org for more information). Federal courts in Massachusetts and California have already declared Section 3 of DOMA unconstitutional, and the Obama administration has declined to defend the law in court because it agrees that the law is unconstitutional. DOMA is currently being defended in court by the Bipartisan Legal Advisory Group of the United States House of Representatives. Should the NYCLU succeed in its lawsuit, or should Congress repeal DOMA, some or all of the federal laws where marriage is relevant will be applicable to married same-sex couples who live in states where their marriage is respected.

CAN A CHURCH OR MEMBER OF THE CLERGY REFUSE TO MARRY ME AND MY PARTNER?

Yes. Although the Marriage Equality Act guarantees that the right to civil marriage extends to same-sex couples, it does not require churches or ministers to perform religious marriage ceremonies for same-sex couples. However, more and more religious institutions are allowing their clergy to marry same-sex couples, so it will depend on the institution.

CAN AN EMPLOYEE IN THE CLERK'S OFFICE REFUSE TO GIVE ME A LICENSE OR REFUSE TO SIGN MY LICENSE APPLICATION BECAUSE THEY OBJECT TO MARRIAGES BETWEEN SAME-SEX COUPLES?

No. Nothing in the new marriage law or New York anti-discrimination laws allows a civil servant otherwise required to issue licenses for civil marriages to refuse to do so because of personal beliefs or religious objections. When town and city clerks review marriage license applications, they act on behalf of the State of New York. For that reason, they may not treat one group of applicants differently from another group solely because of personal religious objections.

CAN I BE DISCRIMINATED AGAINST FOR MARRYING SOMEONE OF THE SAME SEX?

Generally, no. The new marriage law requires that all married couples be treated equally. State law also prohibits discrimination based on sexual orientation and marital status. The marriage law allows clergy and certain religious entities to refuse to perform wedding ceremonies or provide services and facilities for a wedding ceremony. Beyond that, nothing in the new marriage law expands anyone's right to discriminate against same-sex couples, married or not. New York's longstanding anti-discrimination laws continue to protect all New Yorkers from discrimination on the basis of sexual orientation and marital status.

These anti-discrimination laws have always included a narrow exception for certain religious institutions. Under New York law, houses of worship and "benevolent orders" such as the Knights of Columbus, may engage in some exclusionary practices that would be unlawful for most other organizations or businesses. For example, if the Knights of Columbus owns a banquet hall, it can rent the hall for only those marriage ceremonies that it chooses to allow there. Still, nothing in the new marriage law or existing anti-discrimination laws allows non-religious institutions or individuals to otherwise discriminate against married same-sex couples. Nor, as discuss below, does it allow private businesses to discriminate.

CAN A PRIVATE BUSINESS, SUCH AS A FLORIST OR PHOTOGRAPHY STUDIO, REFUSE TO PROVIDE A SERVICE FOR MY WEDDING BECAUSE I AM MARRYING A PERSON OF THE SAME SEX?

Absolutely not. Anti-discrimination laws in New York forbid discrimination on the basis of sexual orientation and marital status. Nothing in the Marriage Equality Act changes this. The Marriage Equality Act does not permit a business that provides goods or services to the public, such as a florist or photography studio, to engage in discrimination that has been illegal in New York for years—regardless of the religious beliefs of a business owner or employee.

CAN AN EMPLOYER REFUSE TO HIRE ME BECAUSE I'VE MARRIED MY SAME-SEX PARTNER?

Generally, no. Employers in New York State are not permitted to discriminate on the basis of sexual orientation or marital status. Thus, an employer may not refuse to hire you simply because you're gay, nor may an employer refuse to hire you because you're married—either to a person of the same or different sex. However, a narrow exemption in the anti-discrimination law permits churches, benevolent orders and non-profit organizations operated for religious purposes to exercise a

preference in some circumstances for members of their own religion when making hiring decisions. If you experience discrimination that you believe is based on your sexual orientation or marital status, contact us or another attorney.

CAN MY EMPLOYER REFUSE TO PROVIDE MY SAME-SEX SPOUSE WITH EMPLOYMENT BENEFITS THAT THEY GIVE TO OPPOSITE-SEX SPOUSES OR REFUSE TO RECOGNIZE MY MARRIAGE AS VALID?

With respect to benefits such as family leave, the answer is no. New York law forbids employers from discriminating on the basis of sexual orientation when administering employment benefits such as family leave.

When it comes to benefits such as health insurance, the answer is a bit more complicated. It depends on whether the employer is a government or private entity, and whether the employer offers health insurance plans governed by New York law. State, municipal and local government employers must provide all benefits, including health insurance benefits, to same-sex married couples on the same terms as different-sex married couples. Private companies or non-profits that offer health insurance through a New York state-licensed insurance company also must extend the same benefits to same-sex and different-sex married couples. But many private employers offer "self-funded" health insurance that is not affected by the new law. Employers who offer "self-funded" insurance are not required to offer health insurance coverage to same-sex spouses, although they can. If your employer denies you spousal coverage, you should ask them to reconsider their position. Nothing in state or federal law prohibits them from doing so.

You should check with your employer to determine whether your plan is covered by New York anti-discrimination law, and consult with an attorney if you have questions about your benefits.

IF MY PARTNER AND I GET MARRIED, CAN AN ADOPTION OR FOSTER AGENCY DISCRIMINATE AGAINST US?

No. New York prohibits adoption and foster care agencies from discriminating on the basis of sexual orientation. Nothing in the Marriage Equality Act changes that prohibition.

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