

# The Day

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N.H. Civil Unions: Legal Protections, Obligations, Pitfalls

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Published on 12/31/2007 in [Home](#) » [Nation, World](#) » National News

**Concord, N.H. — New Hampshire's new civil unions law — though well-intentioned — makes a promise to gay couples it can't keep: that all the rights, obligations and responsibilities of marriage will be theirs.**

**In fact, they will not be treated equally, either inside New Hampshire or beyond its borders.**

**They will fall into a separate, evolving legal class recognized by only a handful of states. And more than 1,100 federal laws will discriminate against them regardless where they live.**

**Gay couples taking advantage of the law — which takes effect Tuesday — indeed acquire substantial new state protections ranging from important health benefits to the ability to inherit without a will.**

**But they will be treated legally as two unmarried adults in all but New Jersey, Vermont, Connecticut and California. They probably will be recognized in Oregon, whose domestic partner law takes effect Tuesday.**

**Their status isn't as clear in Massachusetts, the only state that allows same-sex marriage, nor in Washington, Maine, Hawaii and the District of Columbia, which recognize domestic partners to varying degrees.**

**Adding to the legal confusion, gay couples moving to New Hampshire and getting united may still face questions about their status. For example, just released New Hampshire Insurance Department guidelines recognize, without question, health insurance policies subject to Oregon law, but those from California only on a case-by-case basis.**

**Even if they never leave New Hampshire, couples united under the new law won't have the same rights or receive the same benefits that heterosexual couples enjoy under federal laws. They are specifically excluded under the 1996 federal Defense of Marriage Act, which defines marriage as between one man and one woman. Many**

states have adopted similar laws.

**Gay couples united in New Hampshire — or any other state — won't qualify for federal Social Security or veterans survivor benefits or be able to sponsor a foreign national to immigrate as their spouse.**

**Federal laws governing multistate employer health plans will continue to allow the companies to discriminate against their united gay employees. Such discrimination will be illegal under state-regulated health plans that cover married couples.**

**Also, united gay couples will pay taxes on most if not all of the value of costlier health insurance plans — a cost not passed onto married couples. Unlike married heterosexual couples, united gay couples cannot file joint federal income tax returns.**

**Another potential downside faces couples who come to New Hampshire to enter civil unions. They run the risk of being locked in legal limbo if they return home to a state that doesn't recognize their status. A similar problem faces New Hampshire couples who move away.**

**More than 9,300 companies already cover gay couples, including The Associated Press, UPS and Verizon. Though that number is growing, many companies still do not extend benefits.**

**Gay couples with one member working for the state or local government in New Hampshire now will get the same pension benefits as their heterosexual counterparts. But gay couples that include a federal employee won't get the same recognition under the federal retirement system.**

**Gay couples won't pay state taxes to transfer property from one partner to the other, but they could be liable for federal gift taxes.**

**In short, legal experts say couples should see a lawyer before entering into a union — or at least check with their employer's benefits department so they aren't surprised at being taxed or disappointed at being excluded. They also should keep — and carry out of state — legal documents that married couples might not need, such as ones allowing each other to make medical decisions if one is incapacitated.**

**“Everything couples did before to protect themselves, they should do after a civil union,” said Michele Granda, a staff attorney for Boston-based Gay & Lesbian Advocates & Defenders, or GLAD.**

**“It really is a level of fairness that is long overdue, but there are holes in the safety net,” she said. “It's a step, but it can't be a stop. It's opened the door to a future of possibilities but it will not provide the equality that many people think it will.”**

**The benefits can be substantial, however.**

**Lara Schwartz, legal director for the Human Rights Campaign, said New Hampshire's law in particular provides important protections for couples and children when one spouse dies or the couple divorces.**

**“It's basically the state enforcing your promises to one another,” she said.**

**Unlike heterosexual marriage, civil unions are not universally recognized, however, which can make entering into one far easier than getting out of one.**

**New Hampshire has no waiting period for a civil union regardless of residency. Nor is there a waiting period for divorce if both are residents. But if only one of the divorcing parties is a resident, he or she must wait one year.**

**John Rich, a Manchester attorney, said residents who have homes in another state but retain New Hampshire as their official domicile should be able to get a divorce. Couples who move and break their ties to New Hampshire may experience the dilemma facing a gay Rhode Island couple that married in Massachusetts: a requirement that one move to Massachusetts for a year to dissolve the marriage.**

**“When you cross state lines, there's a question whether your family exists at all,” Schwartz said.**

**Seven years after enacting the nation's first civil unions law, Vermont is asking the public if same-sex marriage would provide more equity.**

**Thomas Little, chairman of the Vermont Commission on Family Recognitions and Protection, said the most frequent complaint at hearings is that federal law doesn't recognize gay unions. That wouldn't change if Vermont allowed same-sex marriage, he said.**

**But Middlebury attorney Beth Robinson, chairwoman of the Vermont Freedom to Marry Task Force, argues that more companies would provide health benefits to gay families if the legal designation changed to “married.” More importantly, the designation would provide stronger legal grounds to sue for full recognition, Robinson said.**

**New Hampshire Gov. John Lynch said he hasn't analyzed what other states have done or what impact his state's law will have on them. He signed the law to end discrimination and protect families, he said.**

**“I think we've done the right thing in New Hampshire and that's the state I'm primarily worried about,” Lynch said.**

**Despite the limitations of civil unions, New Hampshire expects 3,500 to 4,000 couples**

to get them in the first year.

Some, like Jeff Burr, 49, and Neil Blair, 44, of Franconia, want to put faces to the law.

**“Yes, it's about the civil rights, but its also about the whole civil rights movement. It's about the big picture. It's about the journey. It's about doing what's right,”** said Blair.

Others, like Betsy Peabody, 46, and Dianne Harhigh, 49, of Concord, want to legally strengthen their family by making a stepparent adoption possible. Harhigh plans to adopt Peabody's 6-year-old daughter, Julia.

Peabody is a realist. She knows civil unions aren't the same as marriage.

**“I'm OK with forward motion even if it's not where we want to be. It's not realistic to get to where we want to be without steps along the way,”** she said.

*Concord*