

Gay employee seeks benefits for partner

COURT: The couple's suit is on hold as they await the outcome of a similar case filed against OHSU

By Mike Schmierbach
Oregon Daily Emerald

When Kelly Matchett-Morris first came to the University, he applied to have his husband Glen receive in-state tuition. The University complied, for a year.

The following year, when Kelly again listed Glen as his spouse, the school "requested documentation of [the marriage's] legality," Kelly said. He thinks the University had assumed he was a woman and discovered its mistake after he became well known around campus.

According to state law, only legally married, opposite sex partners of state employees are eligible for certain benefits, including insurance and in-state tuition. As part of the state benefits system, the University follows this policy.

Now the Matchett-Morris, along with another couple, are suing the University, the Oregon State System of Higher Education, and the state of Oregon. The lawsuit, modeled after one filed by three couples against Oregon Health Science University, argues current policies violate the state constitution and anti-discrimination statutes of Oregon employment law.

The plaintiffs in the OHSU suit won a circuit court decision, and the state attorney general's office appealed. Carl Kiss, the lawyer for the OHSU workers, said he hopes for a decision some time next year. The Matchett-Morris lawsuit, meanwhile, is on hold awaiting the outcome of that precedent setting decision.

Jerry Casby, assistant attorney general, said the two cases are "substantially similar." As such, he filed to have the lawsuit stayed until the statutory and constitutional issues are resolved in the Portland suit.

One part of Oregon's non-discrimination law mandates people not be fired or mistreated because of who they associate with. University Law Professor Dominick Vetri explained the circuit court found current benefits policy violated this law in the OHSU case. "A person is being denied a benefit because of the sex of the person they associated with," Vetri said.

According to Robert Rocklin, an assistant attorney general who helped file the state's appeal in the Portland case, the broad protections of the discrimination statute are "trumped" by the specific language of benefits provisions. "The bottom line is the statute doesn't include domestic partners," he said.

In addition, Rocklin said the state doesn't think the question is one of homosexual rights. "I will never concede the statutes discriminate on the basis of sexual orientation," he said.

Instead, Rocklin claims the law makes a clear distinction between married and unmarried people, regardless of sexual orientation. As such, the law does not deny benefits because of who people associate with, but only because they aren't married.

While Rocklin believes this proves the law does not violate constitutional protections requiring equal treatment, Glen Matchett-Morris disagrees. "There's a catch-22," he said. "The state won't allow us to marry, and only married couples are allowed benefits."

Kiss thinks this "catch-22" is where the constitutional violation lies. "To get access to the benefits, the state requires marriage of couples it won't let marry," he said.

Because homosexual couples cannot legally marry, that legal barrier prevents equal access to employment benefits, Kiss said. According to Vetri, these benefits could be important for the University.

Vetri believes benefits for same-sex partners would help recruit faculty, noting that over 100 colleges and universities already award such benefits. "For the reason of being competitive, we're going to want to open up and extend the benefits," Vetri said.

In addition, Vetri thinks the University could be sending a bad message by refusing to grant benefits. However, he said the school has granted some things to same-sex partners, including access to libraries, gym facilities and counseling for couples.

While Vetri supports the Matchett-Morris' suit, he is working to change University policy by lobbying. "Different strategies have to be used at different times, and sometimes simultaneously," he said.

Vetri's strategy is to convince the University to help persuade the legislature to change the

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law. "We need the people in the academic institutions to [lobby] along with us," he said.

The University is not prepared to engage in such efforts. According to Linda King, director of human resources at the University, the school has not looked into the viability of extending benefits to same-sex couples.

King said if any group were to research such a proposal, it should be OSSHE. Meanwhile, the University won't violate what the attorney general and the state have established as law. "It is not within our purview to change eligible dependents."

However, King said she is "personally supportive." Like Vetri, she thinks the legislature is the eventual key to change.

Glen Matchett-Morris agrees the optimal solution would be for the legislature to change the law to allow same-sex marriages. However, he isn't hopeful such a decision will be forthcoming. "Things like this tend to need court action," he said.

Rocklin believes that action is misdirected. Simply legalizing same-sex marriage would solve the difficulty. "If [marriage] is their beef, they need to attack the marriage statutes," he said.

The Legislature won't meet until next session, and the University does not expect to take any action on the issue, according to King. Meanwhile, with their lawsuit, Glen Matchett-Morris said the couple is "looking for them to realize they are in the wrong."

If that realization comes with legal victory, it could be a long time away. If the state loses on appeal, they could turn to the State Supreme Court, which would have the final say on the subject. Whether they win or lose, the Matchett-Morris still have a while to wait.

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