



What You Should Know About Illinois' New Civil Union Law

On December 1st, 2010, the Illinois Senate approved the Illinois Religious Freedom Protection and Civil Union Act, after the Illinois House's approval the previous day. Once the Governor signs that bill, the Civil Union Act will become the law of Illinois and the extensive and crucially important protections available by joining in a civil union will be available to all Illinois citizens. The following Guide to Civil Unions will help you learn about this important legislation. Questions about how this law relates to your specific situation may require you to consult a lawyer. If you read this Guide and still have questions about why you have been unable to obtain a civil union or why your civil union is not being treated the same as a marriage, then contact us:

By Phone: (312) 201-9740
(800) 572-1092 (inside Illinois only)

By Fax: (312) 201-9760

By Post: ACLU of Illinois Intake Department
180 N. Michigan Ave., Suite 2300
Chicago, IL 60601

Online intake form: <http://www.aclu-il.org/about/requesting-legal-assistance/>

CIVIL UNION BASICS

What is a civil union?

In Illinois, a civil union is a legal relationship between two people -- either of the same or different sex -- providing all of the legal obligations, responsibilities, protections and benefits that the law of Illinois grants to married couples. But a civil union is not a marriage; a civil union does not provide *federal* protections or responsibilities to couples who enter into one, and a civil union will be recognized only in certain other states, not by all states.

Download a copy of the Illinois Religious Freedom Protection and Civil Union Act from: <http://www.ilga.gov/legislation/96/SB/PDF/09600SB1716lv.pdf>

What rights and responsibilities will couples have if they get a civil union?

Couples who enter into a civil union in Illinois have every obligation and protection provided by Illinois law to married couples. These obligations, responsibilities, protections, and benefits may be found in Illinois statutes, administrative rules, policies, court decisions (common law), or any other source of state law. They include:

- *The ability to own property jointly, including the presumption that the property obtained by either partner after joining in a civil union is owned jointly;
- *Certain protections against losing your joint property to creditors;
- *The right to make decisions about one another's medical care if either of you is unconscious or otherwise unable to make those decisions;
- *Rights to keep private your conversations and to avoid testifying against one another;
- *The right to court-supervised distribution of property if you and your partner break up;
- *The right to share the same nursing home room;
- *Pension protections for surviving partners of teachers, police officers, and firefighters, and those other state, county, and municipal employees whose pension benefits pass to their spouses at death;
- *Workers' compensation benefits for partners of employees who are accidentally injured or killed at work;
- *The ability to recover for your partner's wrongful death;
- *Intestacy rights to ensure that your surviving partner will receive some or all of your property if you die without a will.

If I have a civil union, is my employer required to offer spousal health insurance benefits to my partner?

Possibly. Whether they are required to offer the civil union partners of employees the same health insurance benefits they offer employees' spouses depends on (1) the type of employer and (2) the type of benefits they offer to married employees.

If your employer is an **Illinois state, county, or municipal employer**, then they must provide your civil union partner the same health insurance benefits that they provide to spouses of employees.

If you work for the **federal government**, spousal health insurance -- Federal Employee Health Benefits -- are not available for your partner, because the Civil Union Act only provides you with *state law* protections and responsibilities. Several federal employment benefits are however available to same-sex domestic partners, including participation in the Federal Long Term Care Insurance Program, so you should talk to your federal employer about what is available. Here is a chart describing these benefits put together by the United States Department of Justice. <http://www.justice.gov/jmd/ps/benefits-same-sex-partners.html>.

All **private employers** can *choose* to provide spousal health insurance benefits to civil union partners, but it is not clear that all of them are *required* by law to do so. The first step in determining whether your employer is required to provide insurance to civil union partners is to learn whether they have a **self-insured** plan or an **insured** plan. Most large employers offer **self-insured** plans, while smaller employers are more likely to offer **insured** plans. To find out what kind of insurance your employer offers, check the plan description or contact the insurance company or your employer's human resources office.

Insured plans that are governed by Illinois insurance law **must** provide the same health insurance benefits to civil union partners as those they provide to married spouses. For more information, see Civil Unions and Insurance Benefits: <http://insurance.illinois.gov/newsrsls/2011/05/CivilUnionsFinal05-25-11.pdf>, a document prepared by the Illinois Department of Insurance.

Self-insured plans **may** offer coverage to civil union partners, but they may not be required to do so, because of a federal law called ERISA (the Employee Retirement Income Security Act of 1974) that many say preempts or overrides much of Illinois law. Employers with **self-insured** plans may be able to deny coverage to civil union partners, unless the terms of the existing plan or a collective bargaining agreement prevents them from doing so. There are, however, many reasons why they should voluntarily offer such coverage, even if no law requires it.

MARRIAGE AND CIVIL UNIONS

How is a civil union different from marriage?

Couples who have a civil union will *not* have any of the protections or responsibilities federal law provides to married couples. These include social security survivors' and spousal benefits, federal veterans' spousal benefits, immigration rights associated with marriage, federal spousal employment benefits, the right to file joint federal tax returns, exemptions from income tax on your partner's health benefits, the federal exemption from inheritance tax, and many other federal protections which are denied same-sex couples whether legally joined in a civil union or a civil marriage.

Also, most other states will not recognize the legal status of your civil union, even though they would recognize the Illinois marriage of a different-sex couple. This means that when you travel or if you move to another state or country, your union may not be recognized. As a result, you should considering taking certain precautions before you travel, such as executing health care and financial powers of attorney and carrying those with you.

Finally, the most important difference between civil unions and marriage for many individuals is the second-class nature of civil unions. Civil marriage is a widely recognized and respected social structure for two people who have committed to build their life together. Civil unions are not universally understood. It is unclear whether they will be given the same level of respect as marriage in Illinois and elsewhere. What is already clear is that different-sex couples get to choose whether to enter a civil marriage or a civil union; lesbian and gay male couples are given only the civil union option.

What if my partner and I really want to get married? Should we wait for marriage to be legal in Illinois? And if we enter a civil union, will that prevent us from marrying?

Whether to join in a civil union is a personal choice, but not taking advantage of the important protections offered by civil unions may leave you and your partner at risk in certain important ways. For example, a civil union will guarantee that you will be able to make medical decisions for your partner if he or she is unconscious even if you are unable to show the hospital staff an executed power of attorney. It is very unlikely that entering a civil union now would prevent you from marrying, when doing so becomes legal in Illinois in the future. In Vermont, New Hampshire, and Connecticut where civil unions were available prior to marriage, couples who had already joined in a civil union were able to marry once same-sex couples were able to marry.

I got married in Iowa (or another state or country where same-sex couples can marry or enter into a civil union or similar legally-recognized relationship). What does this mean in Illinois?

Once the civil union law takes effect, Illinois will recognize *as a civil union* any marriage, civil union, or another “substantially similar” legal relationship (other than common law marriage) which was legally entered into in another state or country. For example, some states (currently California, Nevada, Oregon and Washington), allow same-sex couples to enter “domestic partnerships” which provide those couples the same rights, benefits, and responsibilities as marriage. Such domestic partnerships are substantially similar to a civil union, even if the name used is different, so they will be recognized as a civil union in Illinois.

You do not need to go through the process of receiving a license and certifying the union in order to have the protections provided by a civil union.

What if I would like to have a civil union in Illinois even though I married elsewhere?

Couples who are already married or joined in a civil union or similar relationship cannot enter into a new civil union in Illinois. That is the same law that applies to different-sex couples – once they marry in another state, they don’t remarry here. Because Illinois will recognize your marriage, civil union, or comprehensive domestic partnership as a civil union, you don’t need to enter into a new Illinois civil union; you’re already in one. If you are unsure whether your existing legal relationship is “substantially similar” to a civil union, then you may want to seek advice from a lawyer.

Once we have a civil union in Illinois, can we get married in a state or country that allows lesbian, gay, and bisexual couples to marry?

It depends on the law of that state or country. Entering into multiple civil unions or marriages in different states or countries could create problems down the road if you decide to dissolve your legal relationship.

Will my partner and I have more rights if we get married in Iowa than if I have a civil union in Illinois?

Not in Illinois, if you are a same-sex couple. The State of Illinois will recognize your marriage as a civil union and give you all the protections and responsibilities described above. But it won’t consider you married. The federal government does not recognize any union between persons of the same-sex, whether it is marriage or a civil union.

If you are a resident of Illinois, it may be easier to dissolve a civil union in Illinois than trying to dissolve a marriage in another state.

ENTERING INTO A CIVIL UNION

Who can get a civil union?

Two people can enter a civil union if they are:

- at least 18 years old;
- not in a civil union, marriage, or another substantially similar legal relationship;
- not closely related to each other (for example, not a sibling, descendent, aunt, uncle, or cousin).

Are civil unions just for same-sex couples?

No. Any couple, whether they are of the same or different sex, can enter a civil union. Some different-sex couples may decide to enter a civil union instead of a marriage because of the impact of marriage on certain federal benefits, such as social security survivor benefits, or on certain private pension or health insurance benefits.

When will civil unions become available in Illinois?

Once the governor signs the Illinois Religious Freedom Protection and Civil Union Act into law, it will become effective on June 1, 2011.

How can my partner and I enter a civil union?

First, you must fill out an application and present it to the county clerk, with any applicable fees. Once the county clerk ensures that you are qualified for a civil union, he or she will issue a license and a certificate for a civil union. The license becomes effective the next day and expires after 60 days.

Once you receive the license and certificate, the civil union must be certified. A civil union may be certified by a judge, a retired judge, a county clerk in counties with more than 2,000,000 inhabitants, by public officials who may solemnize marriages, or by an officiant in accordance with any religious denomination, Indian Nation or Tribe or Native Group. Religious organizations are *not* required to officiate at a civil union, but they may do so if they wish. The person who officiates over your civil union must complete the certificate and return it to the county clerk within 10 days.

I've been told that I have to have the certification in the same county where I got my license. Is that true?

Yes. Just like with marriage licenses, a license for a civil union is effective in the county where it was issued. That means that your certification (or ceremony) must take place in the same county where you received your license. So, for example, if you want to have your ceremony in Champaign County, you should apply for a license in Champaign County.

Can we enter a civil union in Illinois even though we don't live there?

Yes. But prior to issuing a civil union license, the county clerk will verify -- through affidavits or other means -- that you are not prohibited from entering into such a legal relationship by the laws of your home state.

If I already registered as a domestic partner with my city or my employer, do I have to do anything else?

Yes! To get the benefits of a civil union, you will need to take the steps described above.

CIVIL UNIONS AND PARENTAL RIGHTS

How does a civil union affect parental rights?

To be sure that both partners in a civil union have legally enforceable parental rights to your children, the partner who is neither a biological nor an adoptive parent should enter into a second-parent adoption. This is the only way to be certain that both parents' legal relationships with your children are recognized in Illinois, by the federal government, and outside of Illinois when you are traveling or if you move.

The protections offered you and your partner by a civil union, such as pension and inheritance protections, may benefit your children. There may be other ways in which entering into a civil union will help your children. But to protect your parental relationship, you must make sure that both you and your partner are related as a biological or an adoptive parent to your child. If your parental rights are challenged – whether or not you and your partner have entered into a civil union – please contact the ACLU of Illinois.

DISSOLVING A CIVIL UNION

Can civil unions be dissolved?

Yes. The dissolution of a civil union in Illinois happens under the same laws applicable to marriage dissolution. That means the courts are available to resolve disputes about division of property, child custody and visitation, and other issues that commonly arise when marriages break up.

What if I live in another state when I want to dissolve my Illinois civil union?

By entering into an Illinois civil union, you agree that the Illinois courts have authority over your relationship. That means that you can dissolve your civil union through the Illinois court system even if one or both of you no longer live in Illinois when you break up (and even if you never lived in Illinois in the first place).

PROTECTING YOUR RIGHTS

Are there reasons why I should not get a civil union?

A civil union will have many of the rights and responsibilities of marriage. People may decide not to enter a civil union for the same reasons that people choose not to get married, including disqualification from state public assistance programs based on joint income.

Same-sex couples have other considerations too. For example:

- The military may use a civil union between persons of the same sex as evidence to discharge a service member under its discriminatory “Don’t Ask, Don’t Tell” policy.
- Entering a civil union could also create problems for people with certain immigration statuses. Download a fact sheet from GLAD: http://www.glad.org/uploads/docs/publications/Binational_Couples_Immigration_Warning.pdf
- If you are adopting a child from a state or country which allows single parent adoptions, but forbids adoptions by lesbians, gay men, or same-sex couples, a civil union may complicate the adoption or even prevent it from going forward.

If you have questions about any of these situations, you should consult a lawyer.

If my partner and I decide to enter into a civil union, is there anything else we should do to protect our relationship?

In addition to executing powers of attorney and, if you have children, obtaining a second-parent adoption to protect both of your parental relationships, you should seek legal advice about additional precautions you may need to take. Laws regarding same-sex couples are changing rapidly and will continue to do so. Those changes may affect your legal rights in Illinois and in other states and countries where you may travel or may live in the future.

I am having trouble getting a license for a civil union before my county clerk. What should I do?

The law requires county clerks to take certain steps in formalizing civil unions. If your local county clerk is refusing to issue licenses and certificates, contact us.

This set of questions and answers is for education purposes only and is not intended to serve as legal advice. For specific answers to your individual situation, please see an attorney.