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# Recent Developments: Tyma v. Montgomery County: A County Ordinance Is Lawful in Extending Employment Benefits to Domestic Partners of Its Employees

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***Tyma v. Montgomery County:***  
**A County Ordinance is Lawful in Extending Employment Benefits to  
 Domestic Partners of Its Employees**

By: Purvi Patel

The Court of Appeals of Maryland upheld a Montgomery County ordinance, the Employee Benefits Equity Act of 1999 (“Act”), that extended employment benefits to domestic partners of its employees. *Tyma v. Montgomery County*, 369 Md. 497, 499, 82 A.2d 148, 150 (2002). Public concern was raised as to whether the ordinance abrogated the State’s definition of marriage by providing domestic partnerships equal footing with legally recognized marriages. The court disagreed, finding neither state nor federal law preempts a home rule county from enacting a local law solely affecting that municipality’s personnel policies. Moreover, the court stressed the municipality’s actions did not deprive State regulation of marriage.

On November 30, 1999, the Montgomery County Council (“Council”) enacted Montgomery County Bill No. 29-99, which became effective March 3, 2000. Formerly, benefits such as health, leave, and survivorship were only available to spouses and dependents of county employees. However, the Act extended these benefits to domestic partners. The Act’s scope encompassed all active and retired county employees.

The Act amended Chapter

19A, Ethics, of the County Code to include domestic partners under the definitions of “immediate family” and “relative.” *Id.* at 503, fn. 2&3, 82 A.2d at 151. Now, a domestic partner may receive benefits “equivalent to those available to” beneficiaries under the original definitions, including benefits under federal law. *Id.* at 501-2, fn. 1, 82 A.2d at 150-51. To be a beneficiary, a domestic partner must meet all requirements outlined in Section 33-22(c)(1). *Id.* at 503, fn. 4, 82 A.2d 151.

Petitioners, employees and residents of Montgomery County, filed an action in the Circuit Court of Montgomery County seeking an order to invalidate the Act. Instead, the circuit court granted a motion for summary judgment denying their request. The petitioners filed an appeal in the Court of Special Appeals of Maryland. However, before the court of special appeals could review the appeal, the Court of Appeals of Maryland granted *certiorari*.

The court began its analysis with the Home Rule Amendment, Article XI-A of the State Constitution, which “transferred the General Assembly’s power to enact many types of public local laws” to counties if they chose to adopt a home rule charter. *Id.* at 504, 82

A.2d at 152. Furthermore, “counties enjoy full legislative power,” under the Home Rule Amendment, “to pass all ordinances . . . [deemed] expedient under the police power limited only by Article 25 of the State Constitution,” State laws, and a similar public general law. *Id.* at 506, 82 A.2d at 153.

The court differentiated between a public general law and a public local law. A general law is defined as “a subject . . . of significant interest . . . to more than one geographical subdivision, or the entire state.” *Tyma*, 369 Md. at 507, 82 A.2d at 154 (*citing Cole v. Sec’y of State*, 249 Md. 425, 435, 240 A.2d 272, 278 (1968)). Local laws apply to “only one subdivision.” *Id.*; *see Steimel v. Bd. of Election Supervisors of Prince George’s County*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976)).

Petitioners’ first contention was Maryland law does not recognize same-sex and common-law marriages. *Id.* at 508, 82 A.2d at 154. As a result, this Act is expressly prohibited from granting benefits to same-sex partners of Montgomery County employees. *Id.* Petitioners also argued the Act was “an unlawful, back-door attempt” to legitimize “illegitimate relationships under Maryland law by attempting to create . . . a legal

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equivalency between lawful spouses and same-sex domestic partners.” *Id.* at 509, 82 A.2d at 155.

In response, the court confirmed the lower court’s conclusion that the Act was properly enacted. *Id.* at 511, 82 A.2d at 156. Because it was a purely local law, the Act did not infringe the State’s ability to regulate or define marriage statewide. *Id.* Moreover, the Act may “significantly enhance the county’s ability to recruit and retain highly qualified employees.” *Tyma*, 369 Md. at 512, 82 A.2d at 157.

Next, petitioners asserted the Act “affects the interests of the whole State as well as interests outside the State” and also “require[s] expenditure of State funds.” *Id.* at 509, 82 A.2d at 155. The court relied on *Snowden v. Anne Arundel County*, finding it reasonable for State funds to be used in reimbursing private legal expenses of certain county employees charged with a criminal offense. *Id.* at 511, 82 A.2d at 156 (*citing Snowden*, 295 Md. 429, 431, 456 A.2d 380, 381 (1983)). Similarly in this case, the court agreed with the county that the Act falls within the scope of the Home Rule Amendment (the “HR Amendment”) effectuated by Article 25, § 5 of the Maryland Constitution. *Id.* at 512, 82 A.2d at 157.

The court further disagreed with petitioners that a “legal equivalency [existed] between” a domestic partnership and a marriage under the Act based on their similar requirements. *Id.* at 514, 82 A.2d at 158. The Act simply stated whatever benefits were conferred

on a spouse or a spouse’s dependent must also, in the same manner and to the same extent, be provided to a domestic partner of a county employee. *Id.* In fact, the court determined the Act “affects only the personnel policies of Montgomery County and does not implicate the State’s interest in marriage.” *Tyma*, 369 Md. at 515, 82 A.2d at 158. Furthermore, this reasoning maintained consistency with other jurisdictions. *Id.*

Finally, petitioners contended that benefits provided under federal laws, such as the Family and Medical Leave Act (“FMLA”), did not include domestic partners as beneficiaries, so neither may a county ordinance. *Id.* at 517, 82 A.2d at 160. The court, after examining regulations implementing FMLA and other federal laws, concluded employers “must observe . . . plan[s] that provide greater . . . rights to employees.” *Id.* (*citing* 29 C.F.R. § 825.700(a)). Because “these laws represent minimum standards,” the county may lawfully provide greater employee benefits than federal laws require without fearing preemption. *Id.*

In *Tyma*, the Court of Appeals of Maryland followed other jurisdictions in upholding a local law, that extended employment benefits to domestic partners of county employees. In validating the Montgomery County ordinance, the court broadened the scope of who is considered a beneficiary. This decision has been groundbreaking for all same-sex domestic partnerships in Maryland, particularly Montgomery County.

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