

Practice Update

Supreme Court Decision Striking Down DOMA Will Have a Significant Impact on Employer-Sponsored Benefits

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The United States Supreme Court ruled on June 26 in *United States v. Windsor*, U.S., No 12-307, that the definitions of “marriage” and “spouse” contained in the Defense of Marriage Act (DOMA) excluding same-sex partners are a violation of the Due Process Clause of the Fifth Amendment and are, therefore, unconstitutional.

The Court’s decision in *United States v. Windsor* will have far-reaching implications, particularly because the definitions of “marriage” and “spouse” affect more than 1,000 federal laws, including those pertaining to retirement accounts, qualified plans, Social Security benefits, welfare plans, estate and gift taxes, family law, and immigration.

Impact on Employer-Sponsored Benefit Plans

As a result of this decision, employer-sponsored benefit plans that provide benefits in one of the 13 states (or the District of Columbia) that allow same-sex marriage may be required to recognize a same-sex spouse as a spouse for all purposes under the Internal Revenue Code and ERISA.

Qualified Retirement Plans

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The Court's decision creates several challenges for employers who offer retirement benefits to their employees. Some of the questions that employers must be prepared to address include, but are not limited to:

- Is a same-sex spouse now the default beneficiary for the participant's account?
- Do a same-sex spouse's medical or education needs give rise to a participant's hardship withdrawal under a 401(k) plan?
- Is a former same-sex spouse entitled to a portion of a participant's benefit under a qualified domestic relations order (QDRO)?
- Is a surviving same-sex spouse able to defer required minimum distributions for a longer period of time following the death of the participant?

Health & Welfare Benefits

Employers offering group health plan coverage will also face challenges with respect to those benefits. Some of the questions that employers must be prepared to address include, but are not limited to:

- Is a same-sex spouse eligible for tax-free employer-paid health benefits?
- Following a qualifying event, is a same-sex spouse entitled to COBRA continuation coverage?
- Is a same-sex spouse entitled under HIPAA to special enrollment rights?
- With respect to cafeteria plans, is a same-sex spouse recognized under the change-in-status election rules?
- Is a same-sex spouse recognized for purposes of life insurance beneficiary determination rules, or for purposes of life insurance coverage on an employee's spouse?

Unanswered Questions

Although the June 26 ruling will have a broad impact on same-sex couples married and living in a state that recognizes same-sex marriage, many questions remain. It is still unclear how the Court's decision will be applied to those same-sex couples who were married in one of the states that recognize same-sex marriage, but who reside in a state that does not. Additionally, it is still unclear whether the consequences with respect to employee benefits will be prospective in nature or if there will be any retroactive application as a result of the Court's decision.

Next Steps

Employers will need to review their current benefit plans and policies to determine whether they are in compliance with the Court's decision and any subsequent guidance that is issued by the federal agencies. In order to ensure compliance, revisions may need to be made to plan documents, plan policies, tax reporting systems, and plan administration systems.

This is the second in a series of updates on the Defense of Marriage Act ruling. [Click here](#) to view the first update, which addressed income and estate tax implications of the ruling.

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