



## Supreme Court Ruling on Marriage of Same-Sex Couples Has Employee Benefit Plan Implications

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Earlier today, the Supreme Court, overturning a Sixth Circuit Court of Appeals ruling, affirmed that the Constitution requires states to permit same-sex couples to marry and to recognize such marriages legally celebrated elsewhere.

The Supreme Court's decision in *Obergefell v. Hodges* ends a long period of litigation over the right of same-sex couples to marry. Since the Supreme Court's decision striking down the federal Defense of Marriage Act (DOMA) two years ago today, twenty-four additional states have recognized marriages of same-sex couples. The Supreme Court's *Obergefell* ruling ends a patchwork of recognition and non-recognition that has complicated the legal status of same-sex couples and their families.

### Employee benefit plan recognition of same-sex spouses

*Obergefell* brings some clarity for employers who provide employee benefits to the spouses and dependents of their employees. Regardless of where an employee lives, the employee's legal marriage to a same-sex spouse will be recognized. With respect to tax-qualified retirement plans and other tax-favored employee benefits, federal law already provides that a same-sex spouse is treated the same as any other spouse regardless of the state in which the couple resides. In addition, state recognition of such marriages should provide uniform state tax treatment for all employer-provided spousal benefits.

A few federal laws, including the Social Security Act and the Family Medical Leave Act (FMLA), specify that an individual's spouse will be determined based on the laws of the state in which the couple reside. (Earlier this year, a federal court enjoined enforcement of new FMLA regulations that would have recognized an employee's same-sex spouse based on the jurisdiction where the marriage was celebrated pending resolution of the *Obergefell* case.) Because of today's ruling, all states must permit same-sex couples to marry and must recognize such marriages legally celebrated in other jurisdictions. Thus, all legally married couples will be treated the same under federal law, regardless of the state in which they reside.

## **Areas that may remain within employer discretion**

Federal law does not require employers to provide spousal coverage for purposes of any tax-favored welfare benefit plan, such as group health plans or life insurance plans. To the extent such plans are self-insured ? that is, the benefits are paid out of the general assets of the plan sponsor ? the employer may exclude same-sex spouses from coverage if the plan provides for such exclusion. If the welfare plan is an insured plan, the state insurance law will control. In many states that have already recognized same-sex marriages, insurance laws prohibit treating same-sex spouses differently than opposite sex spouses. In some states, such as Virginia, the state insurance regulators are yet to specify whether an insurer or insured employee benefit plan can exclude same-sex spouses when providing coverage to the spouses of employees.

Plan sponsors should carefully review the terms of their plan documents and applicable insurance policies to determine whether an employee?s same-sex spouse is eligible for coverage and whether changes need to be made to the plan terms to reflect state insurance laws or the plan sponsor?s wishes, if the plan is self-insured.

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