

employee benefits lawflash

June 28, 2013

Supreme Court's DOMA Ruling: Employee Benefit Plan, Tax, and Employment Considerations

Court's holding makes federal benefits and tax advantages available to same-sex couples but raises further questions.

On June 26, the U.S. Supreme Court issued its long-awaited decision in *United States v. Windsor*,¹ ruling that section 3 of the Defense of Marriage Act (DOMA), which precludes the federal government from recognizing a same-sex partner in the definition of "spouse," is unconstitutional. Justice Anthony Kennedy wrote the Court's majority opinion in the 5–4 decision, which held that DOMA is a deprivation of same-sex couples' due process and equal protection rights guaranteed under the Fifth and Fourteenth Amendments.

Although *Windsor* involved one individual's claim to the estate tax exemption for surviving spouses, the holding of the Court also has important implications for employee benefit plans and federal tax and employment law statutes.

Background and Implications

Section 3 of DOMA provides that a "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or wife. DOMA's definitions of "spouse" and "marriage" control more than 1,000 federal laws in which marital or spousal status is addressed, including the Internal Revenue Code (IRC), Employee Retirement Income Security Act (ERISA), Consolidated Omnibus Budget Reconciliation Act (COBRA), Family and Medical Leave Act (FMLA), and Health Insurance Portability and Accountability Act of 1996 (HIPAA). Many employee benefits plans use DOMA's definition of "spouse" and "marriage" to determine various entitlements and other plan-related matters. As a result, benefits that are normally afforded to opposite-sex married couples have been denied to same-sex married couples. Since section 3 of DOMA was held unconstitutional by the Court, federal law no longer distinguishes between same-sex and opposite-sex marriages.

The decision has immediate and clear implications for the taxation of benefits and the application of spousal rights in retirement plans and in other plans that already use definitions of "spouse" and "marriage" that treat a valid same-sex marriage as a marriage. For example, the tax exemption for family health benefits under the IRC is now available to same-sex spouses who are considered lawfully married and reside in a state that recognizes same-sex marriage. It is not clear, however, how same-sex couples who are considered lawfully married but who do not reside in a state that recognizes same-sex marriage will be treated with regard to federal agency regulations that define marriage based on the state of residence. In recent informal comments, President Obama has indicated that he will direct federal agencies to honor lawful marriages regardless of the state of residence.

Other Considerations

While many questions and issues will be resolved by future interpretation and guidance from federal agencies, employers should begin thinking about the near and long-term implications of *Windsor* as it will have a significant

1. *United States v. Windsor*, No. 12-307 (U.S. June 26, 2013), available at http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf.

impact on many employee benefits plans, including tax implications for both employers and employees.² We will offer a webinar series beginning in July 2013, in which we will analyze these issues in more detail. We will also continue to keep you informed of further developments as we receive guidance from federal agencies. During the webinars, we plan to address the following issues, among others:

Health and Welfare Benefits

- What constitutes a same-sex married couple, and is additional proof necessary to establish a claim?
- Are same-sex couples who are married in a state that recognizes such marriages subject to imputed income and withholding taxes at either the federal or state level for employer-provided healthcare benefits in states that do not recognize same-sex marriages?
- What COBRA and HIPAA rights do same-sex spouses have?
- Are same-sex spouses entitled to insist on mid-year enrollments?
- Are the children of a nonworking spouse now considered stepchildren entitled to dependent coverage under the Affordable Care Act?
- What are the impacts to family medical leave policies and how will DOMA apply to FMLA?

Retirement Benefits

- What changes should plan sponsors, trustees, and custodians of Individual Retirement Accounts (IRAs) and retirement plans make to procedures and policies regarding the spousal rights of same-sex spouses?
- Should custodians and trustees solicit new beneficiary designations?
- How should same-sex spouses be treated for purposes of required minimum distributions, rollovers, and separation decrees?
- Do certain tax-qualified plans need to provide survivor annuities and benefits to same-sex spouses?

Payroll and Fringe Benefits

- Should refund claims be filed for employer and employee Federal Insurance Contributions Act (FICA) taxes previously paid on imputed income from employer-provided healthcare benefits for married same-sex couples?³
- What information should be provided to affected employees seeking to file individual income tax refunds on imputed income?
- Should corrected Forms W-2 be filed?

Other Tax Considerations

- What are the impacts on estate planning for same-sex couples, including marital deductions for federal tax purposes?

Retroactive Application

- Is the decision retroactive?
- If so, is there a time limit on the retroactive application of the ruling?
- Are there different time limits for different claims?
- Do the time limits depend upon the state in which a claim is made?
- Do same-sex spouses have claims for the survivor benefits of deceased spouses who participated in a qualified retirement plan?

2. For more information on the decision's effects on immigration benefits, see our June 27, 2013 Immigration Alert, "Immigration Implications of Supreme Court's DOMA Ruling," available at http://www.morganlewis.com/pubs/IMM_Alert_SCRulesDOMAIsUnconstitutional_27june13.

3. For more information on filing protective refund claims, view our April 8, 2013 LawFlash, "Employer Tax Considerations for Supreme Court's Pending DOMA Decision," available at http://www.morganlewis.com/pubs/EB_LF_DOMAPotentialTaxRefundOpportunities_08apr13.

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