

Under the DOMA No More: Supreme Court Ruling Will Affect Employee Benefit Plans

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Today, the Supreme Court ruled that a central part of the Defense of Marriage Act (DOMA) violates the principles of due process and equal protection in the Fifth Amendment of the United States Constitution, and therefore is unconstitutional. Justice Anthony Kennedy, the author of the 5-4 majority opinion, explained that DOMA unconstitutionally denies equal treatment to gay and lesbian couples because they are treated differently than couples in opposite-sex marriages. DOMA was enacted in 1996 and blocks federal recognition of same-sex marriages. The DOMA section that has been ruled unconstitutional defines "marriage" and "spouse" as excluding same-sex partners for purposes of all federal laws and regulations.

The Supreme Court ruling means that same-sex marriage will be recognized under federal law. The effect of the DOMA ruling is massive in that it will impact thousands of federal laws and regulations, including veterans' benefits, social security, immigration laws, family and medical leave laws, employee benefits and other tax laws. Implications for employee benefits include tax exclusions for health benefits, pre-tax coverage under cafeteria plans, survivor benefits and spousal consent requirements in retirement plans, and division of retirement benefits through QDROs. The ruling may affect the employee benefits treatment for civil union partners as well. It is not yet clear, but we expect that there will be a grace period to bring benefit plans into compliance.

Although the DOMA ruling is a pivotal win for same-sex couples, it does not require the states that currently ban same-sex marriages to change their laws or to recognize gay marriages from another state or country (although some states do). Justice Kennedy cautioned that this ruling was "confined to those lawful marriages" performed in states that already recognize same-sex marriage. The states that currently recognize same-sex marriage are: Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota (effective August 1, 2013), New Hampshire, New York, Rhode Island, Vermont and Washington. The District of Columbia also recognizes same-sex marriage, and due to another Supreme Court ruling (see below), California will again as well.

At the same time, the Supreme Court dismissed the California case of *Hollingsworth v. Perry* on procedural grounds ruling that the defendants have no standing to appeal in court. Hollingsworth (typically referred to as the Prop 8 case) considered the constitutionality of California's same-sex

marriage ban. The effect of the Supreme Court's decision is to let same-sex marriage stand in California, but the Court did not rule on whether it is unconstitutional for states to ban same-sex marriage.

The Benefits Law Group will be holding a webinar soon covering the details of how the Supreme Court rulings will impact your retirement, health and welfare benefits. In the meantime, if you have any questions, please contact a member of the Benefits Law Group.

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