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DOMA Unconstitutional: Impact on Employee Benefits Plans

The U.S. Supreme Court issued two landmark decisions on same-sex marriage Wednesday that will affect how employers administer their employee benefit plans and treat same-sex spouses. Below is a summary of the cases, their outcomes and how these two decisions impact plan sponsors of employee benefit plans.

The Cases

In *U.S. v. Windsor*, the Court struck down the federal law defining "marriage" as exclusively the union between a man and a woman and "spouse" as a person who is married to someone of the opposite sex. The Defense of Marriage Act (DOMA) prohibited the federal government from treating same-sex and opposite-sex married couples alike. It entitled only opposite-sex married couples to federal privileges incident to marriage, such as the ability to file joint federal tax returns.

In a 5-to-4 decision, the Court ruled DOMA was unconstitutional because states and territories are generally free to define "marriage" and the federal government must generally accept those definitions for purposes of administering benefits incident to marriage. Therefore, if a person in a same-sex marriage resides in a state or territory that permits or recognizes same-sex marriages, such as Connecticut, Massachusetts, New York and the District of Columbia, that person must now be deemed married for federal purposes. Currently, 12 states and the District of Columbia recognize same-sex marriage. However, if the person lives in a state or territory that does not authorize or recognize same-sex marriages, then federal law does not require that the person be considered married.

In a related decision, *Hollingsworth v. Perry*, the Court declined to rule on a dispute over the validity of a California state law that, like DOMA, defined marriage as exclusively between a man and a woman. This decision leaves in place a lower federal court's ruling that California's law was unconstitutional, and so, effectively, same-sex couples are once again permitted to marry in California.

What Does This Mean For Employee Benefit Plans?

These decisions will significantly impact how employers administer their employee benefit plans and how they treat same-sex spouses for benefit purposes. Summarized below are examples of how welfare and retirement benefit plans will be affected:

Welfare Benefit Plans

- Same-sex spouses will be able to receive tax-free employer-paid health benefits, meaning employers will not have to impute income on the value of employer-provided health coverage to nondependent same-sex spouses or their children, nor will they be required to pay payroll taxes on the imputed income.
- Same-sex spouses will be able to claim COBRA continuation healthcare coverage in the event they lose their employer-provided coverage due to a COBRA qualifying event.
- Employees will be entitled to reimbursements under flexible spending accounts, health reimbursement accounts and health savings accounts (HSAs) for expenses incurred by their same-sex spouse.
- Earned income from same-sex spouses will affect the exclusion amount under a dependent care assistance program.

- A single-family contribution limit applicable to HSAs will apply to same-sex couples (same-sex couples were formerly entitled to twice the family limit).
- The invalidation of DOMA may trigger a change-in-status event under the cafeteria plan rules.

Retirement Benefit Plans

- Same-sex spouses will be entitled to survivor benefits, including those available under the qualified joint and survivor annuity and qualified preretirement survivor annuity rules applicable to pension plans.
- Domestic relations orders involving same-sex spouses may entitle the former spouse to retirement benefits.
- Expenses related to same-sex spouses may entitle plan participants to hardship withdrawals.
- Same-sex widows/widowers will not be required to commence payment of their same-sex spouse's retirement benefits until April 1 of the year following the year such same-sex spouse would have attained age 70?.

The Supreme Court's rulings in these two cases leave open many issues. Specifically, the rulings do not answer the questions of whether the invalidation of DOMA is prospective (i.e., effective as of the date of the Supreme Court's ruling) or retroactive (i.e., effective as of the date of DOMA's enactment) and what employers are required to do to comply. We anticipate transition guidance from the Internal Revenue Service and expect employers will be given sufficient time to adequately address the required changes. In the meantime, we recommend employers immediately review their plan documents and administrative procedures to determine what plan amendments and adjustments to administrative procedures will be required. Day Pitney's employee benefits attorneys can assist you in this process.