

Impact on Employee Benefit Plans of the Supreme Court's Defense of Marriage Act Ruling

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Overview

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- How DOMA Affected Employee Benefit Plans
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Introduction

- Federal law regulates the terms and benefits provided under employer sponsored pension and welfare benefit plans
- Over the past 25 years, more and more employers have included benefits for the domestic partners and same-sex spouses of their employees
- For more than two decades, same-sex couples have sought governmental recognition of their relations
- Through litigation, legislation and voter referendums, same-sex couples have achieved the right to marry in 13 states and DC
- During the same period, 36 states have added statutes or constitutional amendments limiting marriage to between one man and one woman

Background of DOMA

- Congress passed and President Clinton signed DOMA in 1996
- Section 3 of DOMA provided definitions for the terms “marriage” and “spouse” that, by their terms, excluded same-sex marriages
- These definitions were applicable to all federal statutes, regulations, rulings and orders

How DOMA Affected Employee Benefit Plans

- The DOMA definitions were applied to the Code, the ERISA and all other federal statutes that regulate employee benefit plans
- Thus, all spousal benefits and restrictions applied to only the opposite-sex spouse of an employee

How DOMA Affected Employee Benefit Plans (continued)

- Federal law provides numerous benefits to the spouses of married employees, such as:
 - Required spousal survivor benefits
 - Spousal consent rules Qualified domestic relations orders
 - Favorable rollovers and minimum distribution
 - Favorable tax treatment of welfare benefits
 - COBRA and special enrollment rights
 - Family and Medical Leave Act (FMLA) leave

How DOMA Affected Employee Benefit Plans (continued)

- Additional taxes applies to employer provided benefits to an employee's domestic partner or same-sex spouse
- None of the spousal protections such as QDROs and survivor benefit rights applied to same-sex spouses

The Supreme Court's ruling

- Over the past few years, several courts have ruled Section 3 of DOMA unconstitutional
- In March, the Supreme Court heard oral arguments in an estate tax case, *United States v. Windsor* (“*Windsor*”)
- On June 26, 2013, the Supreme Court issued its ruling in *Windsor*, holding that Section 3 of “DOMA is unconstitutional as a deprivation of liberty” protected by the Fifth Amendment to the U.S. Constitution and its “prohibition against denying to any person the equal protection of the laws.”

The Supreme Court's Ruling (continued)

- The Supreme Court's ruling requires that the federal government recognize the marriages of same-sex couples legal under state law
- Which state law will apply:
 - the state where the couple was married (“the State of Celebration”) or
 - the state where the couple resides (“the State of Residence”)

Post-*Windsor* - Guidance

- Following the *Windsor* decision, President Obama directed Attorney General Holder to work with other cabinet members “to review all relevant federal statutes to ensure this decision, including its implications for federal benefits and obligations, is implemented swiftly and smoothly.”
- Several government agencies have issued formal announcements clarifying how the *Windsor* ruling will be applied

IRS Guidance

- On August 29, 2013, the Treasury and the IRS announced that all legal marriages of same-sex couples will be recognized for all federal tax purposes
- The announcement makes clear that the Treasury and the IRS will apply a State of Celebration rule
- In addition, the IRS issued its first guidance, Revenue Ruling 2013-17 and two FAQs, one on marriages of same-sex couples and one on registered domestic partners and individuals in civil unions

IRS Guidance (continued)

- The Revenue Ruling clarifies that the terms “marriage” and “spouse” will be interpreted to include married same-sex couples
- “The ruling applies to all federal tax provisions where marriage is a factor, including filing status, claiming personal and dependency exemptions, taking the standard deduction, **employee benefits**, contributing to an IRA and claiming the earned income tax credit or child tax credit.”

IRS Guidance (continued)

- The Revenue Ruling follows the IRS' longstanding position expressed in Revenue Ruling 58-66 and applies this ruling to all marriages based on the state in which the marriage was celebrated
- The Revenue Ruling is effective September 16, 2013, prospectively

IRS Guidance (continued)

- The FAQs answer several questions with respect to how employers and employees may file for a refund of additional taxes paid for benefits provided to a same-sex spouse
- Such refunds are limited to open years, *e.g.*, for income tax purposes, generally 2010, 2011 and 2012

IRS Guidance (continued)

- The FAQs provide that, for purposes of satisfying the federal tax laws relating to qualified retirement plans, a plan must recognize the marriage of employees with same-sex spouses
- The FAQs clarify that a registered domestic partnership or civil union is not considered to a marriage for purposes of qualified retirement plan requirements

IRS Guidance (continued)

- The Treasury and the IRS intend to issue further guidance on
 - streamlined procedures for employers to file refund claims
 - cafeteria plans, and
 - the retroactive effect on qualified retirement plans and other tax-favored arrangements

Impact on Employee Benefit Plans

- Tax-favored retirement plans:
 - The spousal consent and survivor annuity rules will apply
 - Minimum distribution requirements and tax-favored rollovers
 - Employees can receive hardship distributions for spousal health care, education and burial expenses
 - A domestic relations order that names a same-sex spouse as alternate payee can be a qualified domestic relations order

Impact on Employee Benefit Plans (continued)

- Health and welfare plans:
 - The employer should cease imputing income for the value of the employer-paid portion of such benefits
 - If covered by an employer's plan, same-sex spouses should be treated as a COBRA-qualified beneficiaries in the event of a loss of coverage
 - Employees can pay for health and other welfare plan coverage for their spouse and step children on a pre-tax basis
 - Employees can be reimbursed from an FSA for the expenses of their same-sex spouse and step-children

Impact on Employee Benefit Plans (continued)

- Health and welfare plans (continued):
 - It is arguably appropriate for employers to permit eligible employees to make a mid-year elections to cover a same-sex spouse or step-children
 - If eligible for coverage, the employee's spouse and step-children will have HIPAA special enrollment rights

Impact on Employee Benefit Plans (continued)

- FMLA leave: If otherwise eligible, the employee is entitled to take 12 weeks of FMLA leave to care for the employee's spouse and step-children
- The Department of Labor reiterated that, for purposes of FMLA, an employee's spouse is determined by the law of the employee's State of Residence

What We Still Don't Know

- Can participants receiving an annuity form of benefit, change the form to a QJSA?
- Will the IRS and DOL permit retroactive claims for benefits from a surviving same-sex spouse?

What We Still Don't Know (continued)

- What amendments must be made to qualified retirement plans and by when?
- How will the States respond to the IRS' adoption of a state of celebration rule?

Questions

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