

U.S. Supreme Court Rulings on Same-Sex Marriage

Impact Retirement Plan Sponsors

Background:

On June 26, 2013, the U.S. Supreme Court issued two decisions on same-sex marriage which have broad implications for retirement plan sponsors. In *U.S. v. Windsor*, the Court ruled unconstitutional Section 3 of the Defense of Marriage Act (DOMA), which denied federal benefits and protections to married same-sex couples even in states where those marriages are legally recognized. In *Hollingsworth, et al. v. Perry*, the Court's ruling effectively restored the legality of same-sex marriage in California.

What Does it Mean for Retirement Plan Sponsors?

For plan sponsors in the 14 states* where same-sex marriages are legally recognized, same-sex and opposite-sex spouses must be treated equally under ERISA law, and are entitled to the same spousal benefits. This includes, but is not limited to, the following changes:

- A same-sex spouse is now entitled to a participant's death benefits under a retirement plan
- For Cash Balance and defined benefit plans, a same-sex spouse is entitled to a qualified joint and survivor annuity (QJSA) or qualified preretirement survivor annuity (QPSA)
- In all retirement plans where a spouse is the default beneficiary, same-sex spouses will be recognized, and they must consent to any changes to beneficiary designations
- A same-sex spouse now qualifies as an alternate payee under a qualified domestic relations order (QDRO)
- Plan participants can receive hardship distributions for a same-sex spouse's medical, tuition or funeral expenses
- Spousal consent for loans and other qualified plan distributions applies equally to same-sex spouses

Many issues related to plan administration still require further guidance from the IRS. It is not clear how the DOMA ruling affects plan sponsors in states where same-sex marriages are not yet recognized. Nor is it clear how the ruling applies to same-sex couples who are legally married in a jurisdiction where such marriages are legal, but who reside in a state where they are not. Guidance is needed for national

employers with retirement plans covering employees in multiple states with differing marriage laws. Further, it is unclear whether the ruling is effective June 26, 2013 or an earlier date.

What Should Plan Sponsors Do Now?

We recommend the following initial action steps if your retirement plan operates in a state where same-sex marriage is legal:*

1. Obtain same-sex marriage information from plan participants and beneficiaries. Update beneficiary designation forms for employees in same-sex marriages.
2. Review corporate and human resources policies and procedures related to spouses and domestic partners, removing any DOMA-related language.
3. Prepare for employees asking questions about rights to various retirement plan benefits.

Kravitz will soon be able to offer you the following consulting services in partnership with legal counsel, once further IRS guidance becomes available:

1. A review of your plan document and SPD (summary plan description) to determine what changes and/or amendments should be made for compliance with post-DOMA regulations. This may include eliminating DOMA-related language and modifying certain provisions. Plan documents for non-qualified plans should also be reviewed.
2. Review and update plan forms and procedures for post-DOMA compliance, including benefit distribution packages, QDROs, and other forms.

We will communicate with you regularly regarding the implications of this ruling as we continue seeking concrete guidance from the IRS and the Department of Labor. If you have any questions, please contact your Kravitz Consultant.

**For 2013, same-sex marriages are legally recognized in California, Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, Washington, and the District of Columbia.*

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