



SCOTUS ruling on DOMA Implications on Health & Welfare Benefit Design and Administration

The US Office of Personnel Management (OPM) has acted swiftly, notifying executive management of federal departments and agencies of the extension of benefits to federal employees and annuitants who have married a spouse of the same sex. The announcement released on June 26, 2013, indicates that some direction can be provided now, but additional guidance from the government is necessary before the OPM can answer every question federal employees may have about same-sex spouse benefits available.

Many attorneys are taking the same position, offering direction with disclaimers that additional information is necessary before they can make certain recommendations to private-sector employers. There are many open issues regarding benefit eligibility and administration that are making it difficult for employers to make decisions and implement the appropriate changes.

What We Know

The Court has ruled that it is unconstitutional for DOMA's definition of marriage to trump a state's definition of marriage for federal law purposes. Same-sex couples who are legally married and reside in a state that recognizes same-sex marriages will be considered married for purposes of all federal laws, which include ERISA and the tax code. These individuals can obtain dependent coverage without being taxed if the plans offered by the employer provide dependent benefits; they have COBRA rights, HIPAA special enrollment rights and can qualify for "family" under the Family and Medical Leave Act. Same-sex spouses also have spousal rights for Health Savings Account distributions.

Section 2 of DOMA is still the law. This section of the Act allows one state to refuse to recognize same-sex marriages entered into another state. This interstate limitation adds an additional layer of complexity to benefit design and administration. Will some same-sex married partners be entitled to pre-tax benefits, COBRA rights, qualified family leave while other same-sex married partners do not qualify for these same benefits?

For now, we know that thirteen states provide full marriage equality to same-sex relationships. The District of Columbia (DC) allows same-sex marriages as well. The states are:

California	Maryland
Connecticut	New Hampshire
Delaware	New York
Iowa	Rhode Island
Maine	Vermont
Minnesota	Washington
Massachusetts	

Questions and Open Issues

Many companies have multi-state operations; some employees live in states that recognize same-sex marriages, others live in states that do not. Now that marriage is no longer defined at the national level and states can make their own determination on who can be legally married, it would appear that employers will need to keep track of each state's position on same-sex marriages because ultimately, the state's marriage laws will dictate the spousal benefits offered and the federal tax implications and federal laws imposed on those benefits. There are lots of questions that need to be addressed:

- Who is a spouse with respect to federal law?
- Will same-sex civil unions and Domestic Partnerships be recognized as marriage?
- What happens if the employee and same-sex spouse are no longer living in a state that recognizes same-sex marriages?
- What is the effective date of same-sex spouse health coverage for an employee who was married to a same-sex partner one year ago?
- What if an employer provides domestic partner benefits but has denied COBRA rights to a same-sex spouse recently?

We are uncertain how long employers will be given to get their health and welfare plans into compliance. President Obama has requested that the Attorney General review the ruling and provide direction quickly so that plan sponsors can act swiftly and appropriately in accordance with the Supreme Court's position on DOMA.

More information will follow.

OPM Memo - <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5700>

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