

ERISA Industry Committee FocusOn Call on DOMA Impact on Employee Benefit Plans

Retirement Plan Issues

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Today's Starting Point

- **DOMA - Section 3:** Supreme Court struck down Section 3 of DOMA (requiring federal law only to recognize marriages of the opposite sex)
- **DOMA - Section 2:** Section 2 of DOMA remains in effect (states are not required to give effect to same-sex marriages performed under the laws of other states)
- **States Permitting Same Sex Marriages:** 13 States (including California) and District of Columbia will recognize same-sex marriages
- **Federal Laws:** Over 1,000 federal laws address marital or spousal status
- **Determination of Marital Status**
 - Marital status is generally determined by state law
 - Federal agencies may use different standards to determine marital status (e.g., state of residence, state of marriage)

Defined Benefit Pension Plans - What We Know

Defined Benefit Plan Impact	Impact If Marital Status Recognized
Effective Date	<ul style="list-style-type: none"> Section 3 of DOMA is now unconstitutional, apparently requiring immediate plan compliance
Required Minimum Distributions - Age 70½	<ul style="list-style-type: none"> Distributions in the form of an annuity are not generally required to begin to same-sex surviving spouse earlier than the end of the year when deceased employee would have attained age 70½
Qualified Joint and Survivor Annuities (“QJSAs”)	<ul style="list-style-type: none"> Same-sex spouse must be offered a QJSA and consent to any waiver by participant
Qualified Pre-Retirement Survivor Annuities (“QPSAs”)	<ul style="list-style-type: none"> Same-sex spouse must be provided a QPSA if participant dies prior to retirement (unless waived)
Qualified Domestic Relations Orders (“QDROs”)	<ul style="list-style-type: none"> Division of pension plan benefits with same-sex spouse by QDRO will not violate anti-alienation rules
415(b) Limits	<ul style="list-style-type: none"> Value of same-sex spouse’s benefit not taken into account for maximum benefit limits under 415(b)
Eligible Rollover Distributions	<ul style="list-style-type: none"> Same-sex surviving spouse may elect to roll over plan distributions into an “eligible retirement plan” in the same manner as if the spouse were the employee

Defined Contribution Plans - What We Know

Defined Contribution Plan Impact	Impact If Marital Status Recognized
Effective Date	<ul style="list-style-type: none"> Section 3 of DOMA is now unconstitutional, apparently requiring immediate plan compliance
Required Minimum Distributions - Age 70½	<ul style="list-style-type: none"> Distributions in the form of an annuity are not generally required to begin to surviving spouse earlier than the end of the year when deceased employee would have attained age 70½
Hardship Withdrawals	<ul style="list-style-type: none"> Permitted to pay medical, education, and/or funeral expenses of same-sex spouse
Plan Loans	<ul style="list-style-type: none"> Spousal consent by same sex spouse required if plan is subject to joint and survivor annuity rules
Beneficiary Designations	<ul style="list-style-type: none"> Same-sex spouse generally must be designated beneficiary for vested account balance unless consent provided
QDROs	<ul style="list-style-type: none"> Division of defined contribution plan benefits with same-sex spouse by QDRO will not violate anti-alienation rules
QJSAs and QPSAs	<ul style="list-style-type: none"> To extent defined contribution plan is subject to minimum funding standards (e.g., money purchase plan), QJSA and QPSA must be offered to same-sex spouse

Retirement Plans – What We Need to Know (To be Continued)

Retirement Plan Impact	Retirement Plan Issue
Retroactive Impact	<ul style="list-style-type: none"> DOMA is unconstitutional since 1996; failure to have extended plan provisions to same-sex spouses (in states recognizing same-sex marriages) is open question
Qualified Status of the Plan	<ul style="list-style-type: none"> Failure to provide spousal rights (e.g., qualified joint and survivor annuity) to same-sex spouse (without spousal consent) may present qualification issue
Responding to Claim and Appeal Activity	<ul style="list-style-type: none"> Plan sponsors may anticipate potentially significant claim and appeal activity involving same-sex spousal rights Resolution may need to await IRS/DOL/court guidance
Determination of Marital Status	<ul style="list-style-type: none"> How does an employer treat an employee married in a state recognizing same-sex marriage but subsequently residing in a state that does not recognize the marriage (e.g., state of residence or state of marriage)? Will location of employer matter?
One-Year Marriage Requirement	<ul style="list-style-type: none"> If plan requires participant to be married throughout one-year period before earlier of annuity starting date or participant's death, will one-year period commence as of DOMA decision, date of same-sex marriage, or newly residing in state?
Impact on Plan Administration	<ul style="list-style-type: none"> How quickly must plan administration be adjusted? How should transactions (e.g., distributions) post-DOMA involving same-sex spouses be handled?

Next Steps

Plan Sponsor	Moving Forward on Retirement Plans
Review of Plan Documents	<ul style="list-style-type: none"> ▪ Confirm defined benefit pension and defined contribution plan terms impacting spouses ▪ Determine if spousal benefits are intended to be design-based or legally required ▪ Develop required plan amendments
Plan for Addressing Effective Dates for Changes	<ul style="list-style-type: none"> ▪ Retirements and plan benefit elections are taking place ▪ No delay for collective bargaining populations ▪ Anticipate IRS/DOL transition guidance
Review States Where Employees and Same-Sex Spouses Reside	<ul style="list-style-type: none"> ▪ Develop data on residence of employees and same-sex spouses ▪ Coordinate process for recognizing opposite-sex and same-sex spouses
Plan Disclosures and Communications	<ul style="list-style-type: none"> ▪ Review ERISA disclosure obligations relating to same-sex spouses ▪ Review SPDs and plan forms for required modifications
Claim and Appeal Committee	<ul style="list-style-type: none"> ▪ Plan fiduciaries will need to be prepared to address claims for retroactive benefits

Next Steps (continued)

Plan Sponsor	Moving Forward on Retirement Plans
Evaluate Administrative and Third-Party Processes	<ul style="list-style-type: none">▪ Establish a “going forward” strategy to address most immediate impacts▪ Review administrative systems for tracking of spousal rights▪ Review spouse-related election processes▪ Coordinate administrative coding processes for state of residence with same-sex marital status
Revise Plan Administration Policies and Procedures	<ul style="list-style-type: none">▪ Need to update plan policies and procedures involving spousal consents, QDRO procedures, distribution election forms, beneficiary designations, etc.
Review Pension Funding Obligations	<ul style="list-style-type: none">▪ Confirm financial impact, if any, to plan funding obligations for recognition of same-sex spouses for survivor annuities and death benefit payments
Nonqualified Plans	<ul style="list-style-type: none">▪ Review plan terms to confirm intent to track qualified plan provisions, or individual plan designs

Biography



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Tom is a Retirement Partner responsible for Aon Hewitt’s Legal Consulting & Compliance Practice. Tom is a member of the New York State and American Bar Associations, including the latter’s committees on business law, taxation, and insurance. He is also a member of the Legal Committee of the ERISA Industry Committee. Tom has been a frequent speaker before numerous professional organizations and has published a number of articles in professional journals.

Tom received his Bachelor of Arts degree in Economics, cum laude, from New York University, and graduated with a Juris Doctor degree from Fordham University School of Law.