

ERIC DOMA TASK FORCE

U.S. v. Windsor – Now What?

Issues to Consider

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What the DOMA Decision Did

- Section 3 of DOMA which requires that the federal government only recognize marriages of the opposite sex was struck down as unconstitutional.

What the DOMA Decision Did Not Do

- Did not define marriage
- Did not indicate the effective date of the decision
- Did not provide specific guidance on recognizing same-sex marriages in states that do not permit them

IRS Statement on the Supreme Court Decision on DOMA

“We are reviewing the important June 26 Supreme Court decision on the Defense of Marriage Act. We will be working with the Department of Treasury and Department of Justice, and we will move swiftly to provide revised guidance in the near future.” (Posted on 6/27/13 on IRS Website)

State Marriage Laws

- Must a same-sex marriage in a state or district permitting such marriage (“State of Celebration”) be recognized in a state that does not otherwise permit same-sex marriage (e.g., State of Residence)?
- Will you use marriage certificates to verify coverage?

Multi-state Employers

- What is the effect on a company's plans if it has employees in several jurisdictions, only some of which recognize same-sex marriages?
- Will or should employers use a single standard recognizing same-sex spouses (e.g., state of residence, state of employment, state of marriage certificate, or state of employer's headquarters)?
- Will it be discriminatory to administer a plan recognizing same-sex spouses residing in one state but not in another state that does not recognize such unions?

Health Benefits vs. Retirement Benefits

- Health Benefits – Coverage for spouses is not required.
- Retirement Benefits – Death benefits for spouses are required.

Payroll Issues

- How and when should payroll systems be updated to reflect the change in the tax treatment of benefits to same-sex spouses?
- Are you considering requesting a refund for payroll taxes paid in open tax years?

Plan Administration

- What are you doing to update plan administration procedures relating to spousal consents, hardship distributions, QDROs, QJSA, QPSA and RMD?
- What are you doing to update documentation to incorporate benefits to same-sex spouses?

Disclosures and Communications

- Have you decided how and when any changes in coverage should be communicated to plan participants?
- How should companies answer questions from participants?
- Do you have a script?

Coordination with Third-Party Administrators

- Have you contacted third-party administrators to help you identify and provide benefits to same-sex spouses under group health plans, COBRA and FMLA?

Claims and Appeals

- New benefits for same-sex spouses may lead to increased claims.
- Are proper processes in place to address claims relating to benefits for same-sex spouses?

Benefits for Federal Employees

- The US Office of Personnel Management (“OPM”) on 6/28/13 issued a Memorandum for Heads of Executive Departments and Agencies regarding benefits to same-sex spouses.
- In response to the Supreme Court decision , “the United States Office of Personnel Management (OPM) will now be able to extend benefits to Federal employees and annuitants who have legally married a spouse of the same sex.”
(<http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5700>)

Benefits for Federal Employees (cont'd)

- On 7/3/13, OPM issued a Benefits Administration Letter (Number 13-203).
- “Benefits coverage is now available to a legally married same-sex spouse of a Federal employee or annuitant, *regardless of the employee’s or annuitant’s state of residence.*” (italics added). Bottom line: once legally married, it doesn’t matter if you move.
- “Because existing same-sex marriages were not recognized by the Federal government before this Supreme Court decision, all legal same-sex marriages that predate the decision are being treated as new marriages.” Bottom line: the date of the decision is treated as the date of the marriage. Seems to eliminate a lot of retroactivity questions. Or does it?

<http://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2013/13-203.pdf>

Effective Date of Coverage

- In the absence of guidance, have you considered providing benefits to same-sex spouses prospectively only from the date of the decision?
- If retroactive coverage is not required, will you choose to provide retroactive coverage?

What You Should Do Now

- Take inventory of the plans that will be affected and determine what current benefits are offered to same-sex spouses.
- Review plan documents, SPD's, benefit election forms, including beneficiary designation forms, to determine whether the definition of "spouse" needs to be revised.
- Develop a consistent approach for communication to employees during the "study" period – develop a "script".
- Monitor IRS/DOL Guidance with respect to the specifics on extending coverage to same-sex spouses.

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JOAN A. DISLER is a Member of the Firm and Chair of the Employee Benefits Practice. Ms. Disler directs a national practice that provides strategic and practical counsel to the firm's clients on complicated issues relating to employee benefits. Ms. Disler's practice focuses on includes all aspects of

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PRACTICES

Employee Benefits

- ERISA
- Executive Compensation
- Health and Welfare Plans
- HIPAA
- Mergers & Acquisitions/Downsizing
- Multiemployer Plans
- Retirement Plans

Health Care and Life Sciences

- ERISA/Benefits

EDUCATION

LL.M., New York University School of Law,
in Taxation, 1980

J.D., Rutgers University School of Law –
Newark, 1976

B.A., Douglass College of Rutgers University, 1973

Bar Admissions

New Jersey

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