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SUPREME COURT'S INVALIDATION OF DEFENSE OF MARRIAGE ACT (DOMA) IMPACTS BENEFIT PLANS

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On June 26, 2013, the United States Supreme Court ruled that Section 3 of the federal Defense of Marriage Act (DOMA) is unconstitutional. The 1996 law, which defined a marriage as a union between one man and one woman for purposes of federal law, was struck down in the 5-4 *U.S. v. Windsor* decision as a violation of the Equal Protection Clause of the Fifth Amendment. Section 2 of DOMA, which provides that states are not required to recognize same-sex marriages performed in other states, was not at issue in the case and was not addressed by the Court.

The *U.S. v. Windsor* case was brought by Edith Windsor after the death of her wife, Thea Clara Spyer. The women were legally married in Canada in 2007 and lived in New York, which later began recognizing same-sex marriage. After Spyer's death, Windsor faced a large federal estate tax. Under DOMA, a heterosexual spouse would not have faced the same tax burden. Windsor sued in 2010, arguing that Section 3 of DOMA was unconstitutional.

The case reached the Supreme Court this past term along with a second case, *Hollingsworth v. Perry*. *Hollingsworth v. Perry* involved a challenge to California's Proposition 8, which banned same-sex marriage in California. Also on June 26, the Supreme Court determined that it did not have jurisdiction to hear the *Hollingsworth v. Perry* case because the petitioners did not have standing to bring suit (the State of California declined to defend the constitutionality of the law). In light of the Court's decision not to hear the merits of *Hollingsworth v. Perry*, the most significant impact from the June 26 same-sex marriage decisions flows from the *U.S. v. Windsor* decision striking down Section 3 of DOMA.

As a result of the Court's decision invalidating DOMA, same-sex couples who are validly married under the law of one of the 14 jurisdictions (12 current states and the District of Columbia, plus California) that recognize same-sex marriages will now be considered married for purposes of federal law. This decision has far-reaching implications for employee benefit programs, including retirement plans, health plans, fringe benefits, and related policies, as such programs are governed by federal laws such as the Tax Code, ERISA, or HIPAA. Benefit plan implications may include the following areas:

Qualified Retirement Plans

- Qualified Joint and Survivor Annuities and Qualified Pre-retirement Survivor Annuities

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Consult your attorney for advice appropriate to your circumstances.

- Spousal Consent to Beneficiary Designations / Beneficiary Forms
- Minimum Required Distribution Rules
- Qualified Domestic Relations Orders
- Family Aggregation and Stock Attribution Rules
- Hardship Distributions
- Eligible Rollover Distributions

Health, Welfare and Other Plans

- Taxation of Employer-Provided Health Benefits
- Health Savings Account Contribution Levels
- COBRA
- HIPAA Special Enrollment Rights
- Coverage of Step-Children
- Cafeteria Plan Election Changes
- Employment Taxes
- FMLA Leaves
- Nonqualified Deferred Compensation Plan Terms

There are many open questions left by the Court's decision in *U.S. v. Windsor*. Chief among those questions are the following: (1) Will the effect of the decision be retroactive? If so, will the IRS agree and will individuals and employers be able to recover past taxes? How should employers deal with employees whose benefits have already commenced? (2) How will individuals and employers deal with the myriad of state laws that have essentially been left in place by *U.S. v. Windsor*? For example, if residents of one state travel to a state which recognizes same-sex marriage and are married there, should a qualified plan recognize the marriage? How will a plan or employer determine if a marriage is valid if multiple states are involved?

President Obama has indicated that the Justice Department will be conducting a review of federal benefits and obligations, as well as potential administrative and executive orders which might be used to implement the Court's decision. It is also likely that the IRS will issue interpretive guidance or regulations addressing the impact and implementation of the *U.S. v. Windsor* decision. State regulatory authorities may also weigh in, as applicable. In the meantime, employers may want to at least start thinking about the potential impact on their benefit plan documents and policies, payroll practices, and tax reporting.