

Employer Policies And Procedures That May Need To Be Updated In Light Of Obergefell

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The U.S. Supreme Court, in ***Obergefell v. Hodges***, ruled that same-sex marriage is a constitutionally-protected right which cannot be infringed upon through governmental action. Although private sector employers do not generally have to extend constitutional rights to their employees, many employment laws extend statutory rights to married employees and, in light of *Obergefell*, such rights must now also be extended to employees in a same-sex marriage. As a result, employers may need to update a variety of employment policies and procedures in order to ensure legal compliance with federal and state employment laws. Employee handbooks should be checked to ensure that relevant policies do not unlawfully deny employees in same-sex marriages the rights applicable to employees in opposite-sex marriages. Typical policies that define or refer to spouses include leaves of absence, bereavement, Family Medical Leave Act (FMLA), and Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) policies. FMLA and any other leave of absence forms (and emergency contact forms) should be updated and revised to reflect the changes in the law and, similarly, to ensure there are no improper definitions of "spouse" included on the forms. Likewise, employers should revisit the definition of marriage-related terms in employee benefit plans, summary plan descriptions, and benefit policies to ensure that the benefits' provider is compliant with *Obergefell* (and resulting changes in the definition of "marriage" in laws applicable to employers). Employers should not operate under the assumption that their benefits' providers have updated their materials. Finally, businesses with federal contracts are reminded that the President's Executive Order 11246 and existing requirements from the

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Office of Federal Contract Compliance Programs (OFCCP) prohibit discrimination based on sexual orientation.