

The Impact Of Obergefell On Employee Benefits

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Prior to the *Obergefell* decision, the U.S. Supreme Court, in ***U.S. v. Windsor***, struck down Section 3 of the Defense of Marriage Act (DOMA), which mandated that federal laws only recognize opposite-sex marriages. As a result of the *Windsor* decision, the Internal Revenue Service (IRS) issued guidance that required all qualified retirement plans to treat same-sex and opposite-sex spouses equally. However, the *Windsor* decision was limited to federal law so states were still free to ban same-sex marriages. The *Obergefell* decision requires marriage equality between same-sex and opposite-sex spouses under both federal *and* state law. This means that same-sex spouses and opposite-sex spouses must be treated equally for both federal and state taxation purposes. Therefore, in states that banned same-sex marriage prior to the *Obergefell* decision, employers will no longer have to impute state income to employees on the value of benefits provided to spouses of the same sex. However, unlike qualified retirement plans which require certain benefits to be provided to the spouse of a participating employee, the federal tax code and the the Employee Retirement Income Security Act (ERISA) do not mandate spousal health insurance coverage for any type of marriage. As such, employers subject to ERISA who sponsor self-insured health plans are not compelled under ERISA or the federal tax code to extend health insurance benefits to spouses in any type of marriage, but employers who voluntarily provide spousal health insurance coverage should provide such benefits to employees in same-sex and opposite-sex marriages on an equal basis or face substantial risk of gender, sexual orientation, or marital status discrimination claims; this is particularly true for public sector employers

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who, in addition to discrimination claims, could also face constitutional claims based on *Obergefell* if they treat same-sex and opposite-sex spouses differently with respect to health insurance benefits. Furthermore, states that previously extended health insurance coverage to opposite-sex couples but not to same-sex spouses will likely have to revise their laws to require equal coverage for all spouses or rescind such laws entirely. Finally, *Obergefell* does not provide any protection for unmarried same-sex partners who are in a domestic partnership or civil union. Because same-sex marriage is now legal in all states, some employers may decide to phase out domestic partner and civil union benefits, but such decisions should be made in consultation with legal counsel to understand any potential risks and ensure compliance with applicable law.