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Pension and  
Employee Benefits  
Practice Group:



Richard I. Cohen  
(860) 251-5803  
rcohen@goodwin.com



Ira H. Goldman  
(860) 251-5820  
igoldman@goodwin.com



Kelly Smith Hathorn  
(860) 251-5868  
khathorn@goodwin.com



Bryanne E. Kelleher  
(860) 251-5676  
bkelleher@goodwin.com

[www.shipmangoodwin.com](http://www.shipmangoodwin.com)

## The Impact of the Supreme Court's DOMA Decision on Employee Benefit Plans

On June 26, 2013, the United States Supreme Court ruled, in *U.S. v. Windsor*, that the provision in the Defense of Marriage Act ("DOMA") that excludes same-sex marriages from the definitions of "marriage" and "spouse" under federal laws is unconstitutional. The actual language in DOMA that the Supreme Court found to be unconstitutional reads as follows:

"In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or a wife."

Prior to the recent Supreme Court ruling, DOMA prohibited the federal government from recognizing same-sex marriages, even in those states where same-sex marriages are legal, such as Connecticut, Rhode Island (effective in August), New York, Massachusetts and Vermont. Although DOMA applies to hundreds of federal laws, in this Alert, we are focusing on the two federal laws -- ERISA and the Internal Revenue Code (the "Code") -- which impact retirement plans and other employee benefit plans.

The Supreme Court's ruling, which takes effect immediately, simply removes the DOMA provision noted above; it does not mandate that a state recognize and legalize same-sex marriages. Rather, federal laws now will defer to each state's laws regarding the definition of "marriage" and "spouse". We know employers are eager to understand the practical effects of the ruling, and we have identified below what we believe are the most important issues.

We stress that it is too early to pinpoint all of the implications that the Supreme Court's ruling will have on retirement and other employee benefit plans. For example, it is not clear how same-sex couples who are lawfully married in one state but who reside in a state that does not recognize same-sex marriage will be treated with respect to federal laws. In addition, it is not clear whether or how an affected individual can apply for a tax refund for after-tax health plan coverage in a prior year. We are hopeful that the federal government will be forthcoming with interpretative guidance on these issues.

## **Retirement Plans**

DOMA's restriction on the definition of spouse meant that retirement plan participants with same-sex spouses were treated as unmarried for purposes of the retirement plan. Because DOMA prohibited retirement plan administrators from recognizing same-sex marriages, affected participants had to be sure to designate their same-sex spouse as their beneficiary under the Plan in order for him or her to be eligible for the Plan's death benefits. Now, same-sex spouses will be afforded the same spousal rights as opposite-sex spouses.

- **Defined Benefit Plans - Qualified Joint and Survivor Annuity.** A Qualified Joint and Survivor Annuity ("QJSA") is the required form of payment in a defined benefit pension plan (and a money purchase plan) unless it is waived. A QJSA provides a life annuity to the participant, and thereafter a survivor annuity over the life of the participant's surviving spouse. Because of DOMA, a same-sex spouse was not treated as a surviving spouse. Nonetheless, even prior to the Supreme Court's decision on DOMA, some retirement plans offered joint and survivor annuity options to participants as an *optional* form of payment so that a participant could name his or her same-sex spouse as beneficiary of the survivor annuity option. The Supreme Court's ruling has the effect of treating same-sex spouses the same as opposite-sex spouses, so a participant with a same-sex spouse will automatically receive a QJSA unless both the participant and spouse waive such treatment. Similarly, if the participant dies before the annuity commences, a same-sex spouse will be entitled to a death benefit annuity, the Qualified Pre-Retirement Survivor Annuity ("QPSA"), unless there is a waiver in place.
- **Defined Contribution Plans - Beneficiary Designation.** In a defined contribution plan (other than a money purchase plan), a participant's spouse is automatically the beneficiary unless the spouse waives that status. Because of the Supreme Court ruling, this status now extends to same-sex spouses. For example, an employee in a 401(k) plan with a same-sex spouse may have previously designated a child as his or her beneficiary. Because of the Supreme Court's ruling, that particular beneficiary designation would be automatically overridden by the spousal beneficiary rules of ERISA and the Code, unless the same-sex spouse now waives his or her rights.
- **Qualified Domestic Relation Orders ("QDRO").** Retirement plans must now recognize QDROs with respect to same-sex marriage dissolutions.

## **Health and Wellness Plans**

- **Taxation of Benefits.** Generally, the value of employer-provided health coverage for spouses is not taxed, and the employee-paid portion of such coverage is pre-tax through the employer's cafeteria plan. However, under DOMA, both portions were subject to taxation (in each case unless the same-sex spouse qualified as a "dependent" for federal income tax purposes). The Supreme Court's ruling means the employer portion of same-sex spousal benefits will no longer be taxable to the employee, and the



employee-paid portion will be pre-tax. This applies to coverage under an employer's health plan, as well as the health flexible spending account. It is currently not clear how the Supreme Court's decision affects the Code's "change in status" rules for purposes of adding an existing same-sex spouse onto the employer's cafeteria plan in the middle of a plan year or terminating coverage in the employer's plan to enroll in a same-sex spouse's employer plan.

- **COBRA.** A same-sex spouse will be treated as a qualified beneficiary and eligible to elect COBRA, regardless of dependent status.

This Alert is a starting point, rather than a complete and final analysis of the effects of the Supreme Court's ruling on retirement and other employee benefit plans, in order to focus employers on some of the immediate ramifications of the Supreme Court's ruling. Employers should start thinking about the need to revise payroll and benefit systems, and in addition, begin reviewing their retirement and other employee benefit plan documents to determine whether required changes are needed in response to the Supreme Court's ruling.

### ***Questions or Assistance?***

Should you have any questions about this alert, please contact any member of Shipman & Goodwin's [Pension and Employee Benefits Practice Group](#).

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One Constitution Plaza  
Hartford, CT 06103-1919  
860-251-5000

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300 Atlantic Street  
Stamford, CT 06901-3522  
203-324-8100

---

1133 Connecticut Avenue NW  
Washington, DC 20036-4305  
202-469-7750

---

289 Greenwich Avenue  
Greenwich, CT 06830-6595  
203-869-5600

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12 Porter Street  
Lakeville, CT 06039-1809  
860-435-2539

[www.shipmangoodwin.com](http://www.shipmangoodwin.com)



**SHIPMAN & GOODWIN**<sup>LLP</sup>  
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