United States Supreme Court Decision in Obergefell v. Hodges
COMPLIANCE CONSULTING | JULY 2015

Agenda

• Same-Sex Marriage Background
• Obergefell v. Hodges
• Impact on Employee Benefit Plans
• Employer Action Steps
BACKGROUND

Background

• June 2013 - *United States v. Windsor*
  – Federal law must use state law definitions of “marriage” and “spouse”
  – 13 States and D.C. already recognized same-sex marriage
• September 2014
  – Split in federal courts
• January 2015
  – U.S. Supreme Court agrees to hear *Obergefell v. Hodges*
  – 36 States already recognized same-sex marriage
Obergefell v. Hodges: Basics

• Consolidation of cases: Michigan, Kentucky, Ohio, Tennessee
  – Defined marriage as union between one man and one woman
  – Effectively banned same-sex marriage
• Lead plaintiff – James Obergefell
  – Sued Ohio to acknowledge his marriage performed in Maryland on his husband’s death certificate
Obergefell v. Hodges: Arguments

- Obergefell argument:
  - Ohio’s ban violated constitutional rights to Due Process and Equal Protection under the 14th Amendment of the U.S. Constitution
- State of Ohio argument:
  - U.S. Constitution dictates that States determine the definition and treatment of marriage

Obergefell v. Hodges: Timeline

- April 28, 2015 - U.S. Supreme Court oral arguments
  1) Whether the Fourteenth Amendment requires a state to license a marriage between two people of the same-sex
  2) Whether the Fourteenth Amendment requires a state to recognize a marriage between two people of the same-sex that was legally licensed and performed in another state
- June 26, 2015 – U.S. Supreme Court 5-4 decision in favor of same-sex marriage
Obergefell v. Hodges: Holdings

- Due Process and Equal Protection Clauses of the Fourteenth Amendment require States to:
  1) Allow same-sex couples to marry and
  2) Recognize same-sex marriages legally performed in other States
- Marriage is a fundamental right of all individuals that applies with equal force to same-sex couples

Obergefell v. Hodges: Holdings

- Effective 25 days from the date of ruling (July 21, 2015)
- States that did not recognize same-sex marriages prior to Obergefell
  - Alabama
  - Arkansas
  - Georgia
  - Kentucky
  - Louisiana
  - Michigan
  - Mississippi
  - Missouri
  - Nebraska
  - North Dakota
  - Ohio
  - South Dakota
  - Tennessee
  - Texas
Impact of Obergefell

Health and Welfare Plans

- Does not require employer plans to cover spouses
- Impacts only plans already providing spousal coverage
- Allows administrative consistency across states
Impact of Obergefell

• **Fully insured plans**
  – Must comply with State insurance laws
  – Requires employers to extend those benefits to same-sex spouses

• **Self-insured plans**
  – Requires employers to extend benefits to same-sex spouses where “spouse” is defined as, e.g.:
    • Legal spouse;
    • Spouse as defined by “State law” or a particular state’s law;
    • Spouse as defined by federal law (which defers to state law); or
    • Spouse as defined by the jurisdiction in which the marriage was formed.
  – Using “opposite-sex spouse” - increased risk for discrimination lawsuits

• **Same-sex spouse’s dependent child**
  – May fall into one of the following categories
    • Natural-born child
    • Adopted child (or child who is lawfully placed for adoption)
    • Step-child
    • Foster child
  – Plan may have to cover the same categories of children for married same-sex spouses as it does for married opposite-sex spouses to avoid a nondiscrimination issue.
Supreme Court Decision in Obergefell v. Hodges
July, 2015

WHAT NOW?

What Now?

• COBRA
  – Same-sex spouses covered under an employee benefit have independent right to elect COBRA
• FMLA
  – State of celebration rule issued in January 2015
  – Employers in all states now must provide FMLA leave with respect to same-sex spouses
• HIPAA and Cafeteria Plans
  – Same-sex spouses in all states will have HIPAA special enrollment rights
  – Permissible mid-year election changes apply to same-sex spouses in all states
What Now?

**Taxation**
- Insurance premiums on a pre-tax basis in all states
  - Federal tax already on same basis
- Decrease in payroll taxes for employers in all states
- Tax-favorable treatment of health FSAs, HRAs, and HSAs reimbursements in all states

What Now?

**Retirement Plans**
- No impact to retirement plans subject to only federal law
  - Federal law already provides for recognition of same-sex marriages, including marriages that occurred out of state

**Domestic Partnership Benefits**
- No change to domestic partnerships or benefits
- Employer decision as to whether to continue to offer domestic partner coverage
What Now?

Documentation Considerations
- Retirement, Qualified and Non-Qualified Programs
- Health Plan Coverage (e.g., medical, prescription, dental, vision, EAP, wellness)
- Health Savings Accounts
- Health Reimbursement Accounts
- Health Care Flexible Spending Accounts
- Onsite Medical
- Dependent Care Flexible Spending Accounts
- Cafeteria Plans
- ERISA Plan Document and Summary Plan Description
- Life Insurance (including dependent life insurance)
- Adoption Assistance
- Child Care Programs (centers)
- FMLA Leave (federal and state)
- Military Leave Policy (including FMLA)
- Employment and/or Hiring Policies (e.g., relatives)
- Annual and Personal Leave Policy
- Bereavement Leave Policy
- Child Care Referral Service
- Educational Assistance, Tuition Assistance, Scholarship Programs
- Elder Care Referral Service
- Spousal and Family Relocation Assistance

Stay tuned for more...
Thank you!

The intent of this presentation is to provide you with general information regarding the status of, and/or potential concerns related to, your current employee benefits issue. It does not necessarily fully address all your specific issues. It should not be construed as, nor is it intended to provide, legal or tax advice. Questions regarding specific issues should be addressed by your organization’s general counsel, tax advisor, or an attorney who specializes in this practice area.