Supreme Court Ends State Bans on Same-Sex Marriage

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On June 26, 2015, in an historic 5-4 decision in *Obergefell v. Hodges*, the Supreme Court held that the Fourteenth Amendment requires a state to:

- license a marriage between two people of the same sex; and
- recognize a marriage between two people of the same sex when the marriage was lawfully licensed and performed out-of-state.

Before the decision, 13 states banned same-sex marriage, mostly in the Midwest and South.

What was the Issue?

Per the 2013 Supreme Court case decision in *U.S. v. Windsor* and subsequent guidance, same-sex spouses were recognized for all federal purposes, including federal taxation, COBRA, HIPAA, and FMLA, based on the validity of the marriage in the state of celebration and not on the married couple's residence. However, *Windsor* did not address whether state bans on same-sex marriage (or a refusal to recognize a same-sex marriage validly performed in another state) were valid.

The plaintiffs filed lawsuits in their respective states claiming that state officials violated their Fourteenth Amendment rights by refusing to issue marriage licenses denying them the right to marry and/or by failing to recognize their marriages that were legally performed in a state which fully recognized the right for same-sex couples to legally marry.

The Court held that the Fourteenth Amendment requires a state to license a marriage between any two adults, including a couple of the same sex, and to recognize marriages of same-sex couples lawfully performed in other states.

Similar Concepts

There are various related benefit eligibility concepts.

Domestic Partners

There are domestic partner registries in some states. Domestic partner status does not necessarily affect medical insurance eligibility, but it might. Employers can voluntarily extend benefits to domestic partners, using a definition created by the employer (and approved by any carrier). This may (or may not) include opposite-sex couples. Employers who voluntarily extend benefits to same-sex domestic

partners because same-sex couples could not get married may want to amend their plans to remove this eligibility class.

Civil Unions

Some states recognize civil unions which is marriage-like status for same-sex couples. Employees' civil union partners must be treated in the identical manner as employees' opposite-sex spouses with respect to any insurance policy issued in Colorado, for example. We may see states eliminate this concept in the future, but it remains for now.

Neither of the above concepts is altered by the recent Supreme Court decision.

Common Law Marriage

Common law marriage is a valid marriage that is entered into informally in certain states. Now, states will have to extend this concept to same-sex couples. Self-funded plans may exclude common law spouses when reflected in plan documentation. Insured plans may not.

Coverage for any of the above classifications is not required as to self-funded plans. Coverage for the above classifications is generally required under insured plans. California, for example, requires eligibility for domestic partners, regardless of where the policy is written.

How does this Impact Employee Benefit Plans?

Obergefell prohibits a state from banning same-sex marriage. However, it does not directly address what employers must do as a result of this ruling. Because many states already recognized same-sex marriages as legal, the impact of the Court's decision may mostly affect employer-sponsored fully-insured health and welfare plans in states that currently ban same-sex marriage, as well as employer-sponsored self-funded plans that exclude same-sex spouses from eligibility. Although state law does not generally apply to self-funded plans, there may be increased risk under federal and state discrimination laws for plans that have a definition of spouse that is not consistent with the Supreme Court ruling since the Court held that marriage is a fundamental right under the Constitution.

Employer Action

- Employers already extending benefits to same-sex spouses are not affected. Review existing plan documents and SPDs to ensure eligibility terms align with practices.
- Sponsors of insured plans in states that have banned same-sex marriage are required to include lawfully married same-sex spouses, even if the marriage was conducted in another state.
- Public employers such as state and local governments are required to treat same-sex spouses like opposite-sex spouses for benefits purposes.
- For private employers, the ERISA preemption generally thought to be available to self-funded plans that define "spouse" as being only a opposite-sex spouse will likely be weakened by this decision.
- Employers should expect related guidance to be issued.

For tax treatment of premium payments at the federal level, all legal spouses should be treated the same. As a result of this decision, it is expected that state tax rules should align with the federal rules; however, further guidance is expected. Payroll systems may need to be adjusted.