

MARRIAGE RULING BRINGS SIGNIFICANT CHANGES FOR SAME-SEX COUPLES AND EMPLOYERS

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07.2015

On June 26, exactly two years since its decision in *United States v. Windsor* striking down part of the federal Defense of Marriage Act (DOMA), the U.S. Supreme Court issued another landmark ruling regarding same-sex marriage. In *Obergefell v. Hodges*, the Court held that same-sex couples have a constitutional right to marry, effectively making same-sex marriage legal in all 50 states. The decision has numerous implications for the tax, estate and retirement planning of same-sex couples and will also affect some employers in states that had not previously recognized same-sex marriage.

From *Windsor* to *Obergefell*

In its 2013 ruling in *Windsor*, the Supreme Court found that a section of DOMA was unconstitutional. As a result, the federal government was required to recognize same-sex marriages in the states where it's legal. In the wake of the ruling, the government announced that it would also recognize any same-sex marriage if the couple got married in a jurisdiction allowing such marriages — even if the couple lived in a state that did not.

Even though the *Windsor* ruling didn't recognize a constitutional right to marry, same-sex marriage has become legal in many more states since the 2013 ruling. By the time of the *Obergefell* decision, same-sex marriage was legal in about 75% of states. Now, under the 5-4 ruling, every state must allow same-sex marriage within its borders and recognize licensed same-sex marriages performed elsewhere.

Income tax effects

Perhaps the most obvious change for same-sex married couples living in states that didn't recognize their marriages will be the simplification of the annual tax filing process. Since *Windsor*, these couples typically would file their federal tax returns as married filing jointly or separately and then file as singles (or heads of households, if eligible) for state tax purposes. This could mean additional fees and costs related to tax preparation and, in some cases, higher overall tax liability.

Going forward, every same-sex married couple will be required to file as married (whether jointly or separately) at both the federal and state levels — and will be eligible for state-level spousal tax breaks. If filing as a married couple would result in a lower state tax liability in states that prohibited same-sex marriage until now, it might be possible to file amended returns seeking refunds for previous years in which the couple was married.

There also are circumstances where filing as a married couple could bump a same-sex couple into a higher tax bracket. This often occurs when spouses have comparable income and is sometimes referred to as the “marriage penalty.”

The ruling's effects on health care benefits could also affect a same-sex couple's income taxes. Many employers have been offering domestic partner benefits that allowed an employee to obtain health benefits for his or her partner. But those benefits (and any other nonspousal benefits) represented taxable income for the employee if the couple wasn't married. After *Obergefell*, same-sex couples in every state can marry and obtain spousal coverage (where offered), which isn't taxable and may be cheaper than domestic partner coverage.

On the other hand, with same-sex marriage now legal nationwide, it's possible employers will begin to phase out domestic partner benefits that had originally been offered to provide equity in the benefits between married opposite-sex couples and committed same-sex couples who couldn't legally wed. If an employer took such action, affected same-sex couples would need to marry to take advantage of the benefits. Of course, such a change would also have implications for opposite-sex unmarried couples who've been taking advantage of domestic partner benefits.

Estate and retirement planning

The Court's ruling in *Obergefell* eliminates some potential estate-planning-related headaches for same-sex couples who previously couldn't legally marry.

For example, married couples can make unlimited gifts or bequests to each other without incurring state or federal gift or estate taxes. And they can pass their unused estate tax exemption to a surviving spouse. There was, however, a potential for complication at the state level. Thus, estate planning strategies that could work well at the federal level could create a substantial estate tax burden at the state level.

There are also potential benefits in the retirement arena, particularly with respect to survivor benefits available to a spouse. In a state that didn't recognize the marriage, a retiree spouse might not have been able to opt for a joint and survivor benefit with his or her spouse.

Social Security is another important factor in estate and retirement planning, and the Court's ruling could reap same-sex married couples thousands of dollars, or more, in benefits not previously available. Even after *Windsor*, same-sex married couples in states that didn't recognize their marriages couldn't collect Social Security spousal or survivor benefits. These couples will now qualify for the benefits.

For example, a spouse can receive up to half of the other spouse's benefit if it's more than his or her own. At death, if the deceased spouse received a higher Social Security benefit than the survivor, the survivor generally can receive the entire higher benefit.

Considerations for employers

The legal recognition of same-sex marriage could mean an increase in the cost of spousal benefits for some employers in states that hadn't previously recognized same-sex marriage. Health coverage is subject to state insurance law, which now can no longer treat same-sex spouses differently from opposite-sex spouses. For example, as indicated above, group health care plans will now need to cover same-sex spouses if they cover opposite-sex spouses, which could boost costs. Self-insured health plans can arguably continue to exclude same-sex spouses, but employers could invite discrimination lawsuits by doing so. Costs could also grow as more same-sex couples exercise their right to marry and subsequently seek spousal benefits.

All employers subject to the Family and Medical Leave Act and/or state family and medical leave laws will also be required to extend family and medical leave to employees to care for same-sex spouses, regardless of where the couple was married or resides. These employees also will be entitled to bereavement leave for their spouses, as well, where it's provided.

While the initial need to update policies, forms, employee handbooks, plan documents, beneficiary designations and the like may seem burdensome for affected employers, it's likely that the Court's ruling generally will reduce employers' administrative burden in the long run. Employers, for example, will no longer struggle with applying different benefits funding and tax rules depending on whether an employee is in a same-sex or opposite-sex marriage.

Moving forward

For same-sex married couples, the Supreme Court's decision has substantial tax implications. If you have questions regarding tax and estate planning in light of the ruling, we'd be pleased to help answer them.