

DOMA Ruling

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PRACTICE AREAS

Employee Benefits and ERISA
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On June 26, 2013, the U.S. Supreme Court handed down a much-anticipated decision in *United States v. Windsor*, and ruled that a provision of the Defense of Marriage Act (DOMA) that denies federal benefits to same sex couples that are legally married is unconstitutional. *Windsor* was a case about a \$363,053 federal estate tax liability that the IRS imposed upon Edie Windsor because the IRS did not recognize her marriage to Thea Spyer, which had been validly entered into in Ontario, Canada, and was recognized under the state law of New York. While the decision does not establish a constitutional right to same-sex marriage, it does mean that legally married same-sex couples are entitled to the same federal benefits as heterosexual couples. Currently, same-sex marriage is legal in only 12 states (Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, New York, Washington, Maine, Maryland, Rhode Island, Delaware, and Minnesota), and the District of Columbia, with California soon to join this list due to another Supreme Court decision issued this week. Over 1,100 federal laws, including immigration, veterans' benefits, family medical leave, Social Security and Medicaid benefits, and a variety of additional tax laws will be impacted, as DOMA had provided a definition of marriage that is no longer applicable to those laws.

For employers, the ramifications of the decision in *Windsor* will unfold in the coming months. The White House has said that the ruling will be "implemented swiftly," meaning employers will want to act quickly in addressing the changes to newly available federal benefits for same-sex couples. Notably, some of the largest U.S. employers (including Apple, Google, Starbucks, Nike, Time-Warner, Facebook, Microsoft, Amazon,

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Johnson & Johnson, and CBS) filed a "friend of the court" brief urging the Supreme Court to find DOMA unconstitutional, explaining that DOMA imposed significant administrative costs and harmed their ability to attract and retain talent. Because there are questions regarding the retroactive application of pre-DOMA tax laws, we will monitor upcoming guidance that we expect from both the IRS and the Department of Labor.

Change to the legal landscape with respect to the recognition of same-sex marriage occurs daily. Among the many items and issues that employers who reside or do business in states that recognize same-sex marriage can and should begin examining immediately are (1) all benefit arrangements in which spouses and children are eligible to participate; (2) changes to imputed income related to health and welfare plans; (3) benefits calculations and documentation under defined contribution and benefit plans; and (4) contacting vendors who provide health or other benefit plans to determine what processes they are putting in place to address the changes. How this landmark decision affects your business is important to us, and if you have questions about these or any other workplace issues, please contact us with your concerns.