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BLOGS

Diversity & Inclusion; Employment Law Updates

When it Comes to Employee Benefits, Its Now Just Marriage

The U.S. Supreme Court announced another eagerly anticipated decision last Friday, ruling that gay and lesbian couples have a fundamental right under the U.S. Constitution to marry. The Courts decision in *Obergefell v. Hodges* follows decades of advocacy by groups favoring and opposing same-sex marriage, as well as ramped up legislative activity and court battles over the legality of same-sex marriage in recent years.

The cases before the Supreme court involved state laws from four states Kentucky, Michigan, Ohio, and Tennessee — that defined marriage as the union of a man and a woman. Under their state laws, Kentucky, Michigan, Ohio, and Tennessee did not permit same-sex marriage within the state and did not recognize as valid a same-sex marriage performed in another state.

The Supreme Courts decision on Friday requires that all states now permit civil marriage between members of the same or opposite sex. The ruling also eliminates a legal dichotomy in connection with employee benefits that followed the Supreme Courts decision two years ago in *United States v. Windsor*. In *Windsor*, the Court struck down a key part of the federal Defense of Marriage Act that had defined marriage as a union between a man and woman. As a result, there was a dichotomy between federal and some states recognition of same-sex marriage and some uncertainty about the resulting availability of civil benefits to married couples. The *Windsor* decision did not address state marriage bans or exceptions to the full faith and credit recognition of marriages performed in other states, elevating the status of discourse on same-sex marriage to a federal constitutional concern.

In Fridays *Obergefell* ruling, the Supreme Court justices split 5 to 4 along the same lines as in the *Windsor* decision two years ago. Justices Breyer, Ginsburg, Kagan and Sotomayor joined Justice Kennedy in the majority decision. In holding that gay and lesbian couples have a fundamental right to marry, Kennedy wrote, No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were.

Justices Roberts, Scalia, Alito and Thomas each wrote a dissenting opinion, with themes varying from the decision being a threat to democracy and a violation of states rights to the majority ruling being an act of will, not legal judgment.

Whether you fall into the majority or dissenting camp, the Courts decision brings more certainty to employee benefits. With uniform recognition of same-sex marriage now the law throughout the United States, uniform treatment of employee benefits for legally married couples is now a federally recognized constitutional right.