eBenefits Alert - Same-Sex Marriage Decisions: What Now for Employee Benefits?

June 26, 2013

The Supreme Court's decisions on two cases implicating the intersection of employee benefits and same-sex marriage were issued this morning, June 26, 2013. The opinions issued involved the federal Defense of Marriage Act (DOMA) and California's Proposition 8 (Prop 8). The DOMA decision struck down the provision limiting marriage for federal purposes to a marriage between a man and a woman as unconstitutional under the equal protection clause of the Fifth Amendment. The Prop 8 decision found that the petitioners did not have standing to challenge the district court decision overturning the California ban on same-sex marriage.

What Does the DOMA Decision Do?

- The law affords federal law benefits and obligations to same-sex couples legally married in one of the 14 jurisdictions recognizing the marriage on the same basis as opposite-sex couples.
  - Federal law benefits will include tax benefits under the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA).

What Doesn't the DOMA Decision Do?

- The law does not require states to recognize a same-sex marriage legally contracted in another state.

What are Some Federal and State Tax Issues After the DOMA Decision?

- Some benefits (such as health care coverage) may be provided on a pre-tax basis to married spouses.
- This applies to same-sex spouses for state tax law purposes in states (such as Minnesota) that recognize same-sex marriage.
- Employers offering pre-tax benefits may no longer need to impute income for federal tax purposes, depending on the state in which the employee is subject to tax.

What are Some ERISA Considerations After the DOMA Decision?

- Legally married same-sex spouses will be covered by the spousal rights and obligations under various ERISA provisions, such as
  - Spousal consent

  - Qualified Domestic Relations Orders
  - Special distribution options
- It's not clear how the decision will impact same-sex couples married in a state that recognizes same-sex marriage, but live in a state that does not recognize same-sex marriage

What About DOMA and the Affordable Care Act?

- In 2014, large group health plans must offer coverage to employees and "dependents."
- "Dependents" does not include spouses of either gender.
- "Dependents" might now include the children of a same-sex spouse.

What Does the California Prop 8 Decision Do?

- The decision provides California the ability to begin issuing marriage licenses to same-sex couples.

What Doesn't the Prop 8 Decision do?

- It does not affect constitutional bans on same-sex marriage in other states.

What Should Employers Expect?

- Having to address issues that will arise when employees in a same-sex marriage move from a state that recognizes same-sex marriage to one that doesn't, or get married in a state that recognizes same-sex marriage and reside in one that doesn't
- Possible additional information regarding federal treatment of Civil Unions and Domestic Partnerships in states that adopted those categories trying to provide marriage type benefits to same-sex couples
- Possible further state activity either adopting or preventing same-sex marriage recognition
- Possible additional litigation or legislative activity

What Should Employers Do Now?

- Continue to monitor developing information regarding the Supreme Court decisions
- Review current benefit plan language, insurance policies, and administrative services agreements for:
  - definitions of Spouse and dependents
  - eligibility criteria
- Determine whether changes are needed, considering:
  - Compliance with state law recognition of same-sex marriage and federal law recognition of the state law determinations
  - Multi-state employers' issues with determining the appropriate federal and state consequences of same-sex marriage recognition

- Determine whether changes are needed in employee communications
- For employers currently providing civil union or domestic partner coverage, determine whether such coverage should continue, terminate, or be modified.

Conclusion

The Supreme Court decisions regarding DOMA and Prop 8 present some clarification for federal treatment of same-sex couples legally married in states recognizing marriage equality regardless of gender. The decisions also raise questions for administering employee benefit plans covering employees in different states and ERISA and IRC treatment of employee benefits. Stay tuned . . .

This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.