

# Supreme Court Decides Same-Sex Marriage



## **Background:**

On June 26, 2015 the U.S. Supreme Court issued a 5-4 majority opinion in *Obergefell v. Hodges*, and struck down state bans on same-sex marriage. The Court's decision reverses the Sixth Circuit decision that upheld same-sex marriage bans in Kentucky, Michigan, Ohio, and Tennessee. As a result, the laws which banned same-sex marriages in 14 states are no longer valid.

## **Existing law:**

Existing federal law recognized all same-sex marriages that were legally entered into in any state for the purposes of federal tax and ERISA purposes. This position was taken by the Treasury Department and the Department of Labor (DOL).

Even though employers should already be in compliance with existing IRS and DOL guidance relating to the definition of spouse and marriage, the Court's decision in *Obergefell* could still have an impact. The extent will largely depend on what, to date, employers have done regarding benefits for same-sex couples.

## **Impact on offers of employee benefit offers:**

Employers already offering benefits to same-sex spouses will likely encounter little change. If the employer is in a state that recognizes same-sex marriage, like Wisconsin, the impact of the decision will have little-to-no impact. However, for employers providing benefits to employees or retirees who live in a state that did not previously recognize same-sex marriage, may need to make some changes regarding their state tax withholding and reporting practices.

Employers that have not previously offered benefits to same-sex spouses may encounter several changes. For purposes of employee benefit offers, an employer who offers spousal benefits can no longer provide such benefits to only opposite sex spouses and exclude same-sex spouses.

### Impact on self-insured health plans:

Those organizations who offer benefits through a self-funded health plan have the most flexibility; which also includes a certain amount of risk. The question of whether an employer can make an offer of coverage to an opposite-sex spouse and not a same-sex spouse is still an open legal issue, as there is no formal legal guidance from the federal government on this topic. However an employer who makes a decision to make an offer to opposite-sex spouses and not same-sex spouses does open themselves to the risk of lawsuits.

### **Key Takeaway:**

Regardless of the state(s) in which your organization resides, we encourage you review your benefit policies after the *Obergefell* decision. It's important for organizations to match their benefit policies with their employment strategies and stay compliant with current federal law.

In previous cases, carriers have offered an in-year "special enrollment" period to allow spouses to enter their plan.

If you have any questions or concerns about the ramifications of this decision on your plan, please contact Marty Malloy at 608-288-2747.



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