

## **Three more ways same-sex marriages will impact employers**

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As a result of the Supreme Court's ruling in on the Defense of Marriage Act (DOMA), married same-sex couples in the now 13 states and the District of Columbia where such unions are legal become eligible for equal benefits under numerous federal programs. In a related article, we covered two significant ways the ruling would impact employers. In this article we provide three more, along with a look at some important issues that are yet to be resolved in wake of the ruling.

Here are three more significant changes for same-sex spouses and employers.

### **1. Use of other fringe benefits for same-sex spouses**

As with health insurance coverage, if an employee participated in a flexible spending account, health reimbursement arrangement, or health savings account, her same-sex spouse was ineligible for tax-free reimbursement for medical expenses under the plans (unless the spouse was a qualified dependent).

Similarly, the employee couldn't pay for a same-sex spouse's health coverage on a pretax basis as part of a Section 125 cafeteria plan. Now, employees with same-sex spouses will be able to take advantage of full participation in these and other tax-advantaged fringe benefits.

### **2. Open enrollment under HIPAA**

Under the Health Insurance Portability and Accountability Act (HIPAA), marriage is a qualifying change-in-status event, which allows employees to immediately make changes to health plans allowing spousal coverage. However, same-sex married couples were required to wait for the next annual open enrollment period to obtain coverage, if available. Now all newly married employees will be able to immediately add their spouses—including same-sex spouses—to health plans offering spousal coverage.

### **3. Spousal eligibility for continuing coverage under COBRA**

COBRA requires health plans to provide continuing coverage to spouses upon certain qualifying events, including termination of the employee's work and the employee's divorce. Now same-sex spouses also will be eligible for this continuing coverage.

### **A multistate patchwork for federal laws?**

Under the Full Faith and Credit Clause of the U.S. Constitution, states are required to recognize the laws and court rulings of other states. Therefore, if an opposite-sex couple is married in one state and then moves to another, the couple is still married. However, Section 2 of DOMA, which the Supreme Court didn't address, carves out an exception to this clause specifically addressing same-sex marriages.

Therefore, a same-sex couple married in one state doesn't have to be treated as married in a state in which such marriages aren't legally recognized. That means same-sex couples in states without legalized same-sex marriage (including states with civil unions and domestic partnerships) are still currently ineligible for these and other federal benefits.

### **Many questions remain**

It will be a matter of time before all the issues and questions in the wake of the Supreme Court's decision are discovered, let alone resolved. This is particularly true for individuals who are married in one state but then reside in or work from a state where same-sex marriage isn't recognized. Further issues may arise for employees who telecommute from a state with differing laws from that of the business headquarters. Meanwhile, for employers in states that do recognize and provide benefits to same-sex spouses, benefits administration may become simpler.