

DOMA Ruling Affects Employee Benefits

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Thirteen states and the District of Columbia currently recognize same-sex marriages. As a result of the Supreme Court's historic ruling in *United States v. Windsor*, such marriages must now be recognized for purposes of more than 1,000 federal statutes that contain provisions specific to spouses. In this client alert, we discuss some important implications of the ruling in the area of employee benefits.

With regard to health and welfare plans, prior to *Windsor*, even though many private employers chose to offer health insurance benefits to same-sex spouses, they could not do so on the same tax-preferred basis available to opposite-sex spouses. As a result, employers faced the choice of either providing the same benefits on a tax-preferred basis to some employees and a taxable basis to others or assuming the additional cost of "grossing up" the salaries of employees in same-sex marriages to offset the taxable value of the benefit. As a result of *Windsor*, health insurance benefits may, and in some cases now must, be offered on the same tax-preferred basis to any lawful spouse. Employers may also now be required or permitted to enroll same-sex spouses in flexible spending arrangements which offer tax-preferred means of paying for health and dependent care.

With regard to retirement plans, prior to *Windsor*, plans subject to the Employee Retirement Income Security Act were only required to offer surviving spouse benefits to opposite-sex spouses. As a result of *Windsor*, such plans may now be required to offer the same surviving spouse benefits to same-sex spouses. These benefits include annuities payable to a spouse upon the death of a retired participant as well as pre-retirement annuities payable to a spouse when a participant dies prior to the plan's normal retirement age.

The full implications of the *Windsor* ruling are unclear, including the details of its retroactive application to employers who operated their benefit plans in compliance with the law as written and to employees who similarly complied when filing their individual income tax returns. Also, it is important to note that *Windsor* does not require any state to affirmatively recognize same-sex marriages. What employers will be required and permitted to do when administering employee benefit plans in multiple states with divergent marriage laws is therefore one key area in which formal guidance is needed.

Windsor represents a major development in the provision and administration of employee benefit plans. Plan sponsors may wish to consult employee benefits counsel to better understand the specific implications of the ruling for their plan design and operation.

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This client alert has focused on some key implications of *United States v. Windsor* for employee benefit plans. The ruling has many additional implications relevant to such plans. For more information regarding

Windsor or other issues concerning your employee benefit plans, please contact [Joanne C. Youn](mailto:jyoun@capdale.com) at jyoun@capdale.com or at 202.862.7855.



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