

July 2013

# **BENEFITS ALERT: Defense of Marriage Act Overturned**

## **Benefit Plans Impacted**

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The landmark Supreme Court ruling that the Defense of Marriage Act (DOMA) is unconstitutional has many implications for ERISA retirement and welfare plans. Essentially the ruling means that “spouse” will be determined under applicable state law, like it was before DOMA was passed.

### ***DOMA’s Impact on Benefit Plans***

For Federal purposes, DOMA defined marriage as being between one man and one woman. In the benefit plan context, this meant that spousal benefits were only guaranteed for spouses of the opposite sex. Thus, in pension plans, same-sex spouses were not guaranteed the right to pension survivor benefits. In health plans (assuming spouses were covered by the plan), benefits provided to same-sex spouses were not tax-free and COBRA benefits were not guaranteed. However, plans were not prevented from voluntarily providing benefits to same-sex spouses.

### ***Plan Terms***

Plans define “spouse” in many different ways. Some plans reference the law of the state in which the participant resides, some limit the definition to members of the opposite-sex. some require the marriage to be “statutory”, and others refer to a “legal spouse”.

### ***Out of State Marriage Issue***

Considering how the term “spouse” is defined under a plan is one element that you need to consider when trying to understand the effects of DOMA’s repeal, especially when dealing with out of state same-sex marriages. Because state same-sex marriage laws vary, you will need to consider the state law governing the plan, the state law where the marriage took place, and the state law where the participant resides. Complicating matters is that, at least as of now, Pennsylvania does not recognize same-sex marriage, New York and Delaware do, and New Jersey recognizes only civil unions.

## ***Next Steps***

- Understand your current policy toward same-sex marriage and domestic partner benefits;
- Understand the various state laws governing same-sex marriage;
- Consider how to handle out of state same-sex marriages;
- If necessary, amend your ERISA plans (and provide summaries of material modifications) accordingly;
- Revise communications regarding spousal benefits (e.g., tax, COBRA and HIPAA notices).

We are prepared to assist you in understanding how this impacts your benefit plans. Please do not hesitate to call us.

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