The Same-Sex Marriage Ruling: Key Employee Benefits Take-Aways

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Last Friday, the Supreme Court of the United States issued its highly-anticipated decision in the case of *Obergefell v. Hodges*, ruling that all 50 states must license marriages between two people of the same sex and must recognize a same-sex marriage lawfully licensed and performed out-of-state.

**History of the Case**

Fourteen same-sex couples (and two men whose same-sex partners are deceased) in Ohio, Michigan, Kentucky and Tennessee sued state officials to challenge the constitutionality of state law bans on same-sex marriage or their state’s refusal to recognize same-sex marriages that were lawfully performed in another state. The trial courts found in favor of the same-sex couples and struck down the bans. However, the Sixth Circuit Court of Appeals reversed and held that the state’s bans on same-sex marriage and their refusal to recognize marriages performed in other states did not violate the couples’ rights to equal protection and due process.

The Supreme Court agreed to address two issues:

1. Does the U.S. Constitution require all states to perform same-sex marriage?
2. Does the U.S. Constitution require states to recognize same-sex marriages legally performed elsewhere?

**The Supreme Court’s Majority Opinion**

In a 5-to-4 decision written by Justice Kennedy, and joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, the Court held that the Fourteenth Amendment to the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state.

The Court declared that marriage is a “fundamental right” that can no longer be denied on the basis that partners are of the same sex. According to the Court’s reasoning, marriage is a “fundamental right” under the Constitution because decisions about marriage are among the most intimate that an individual can make, marriage is a two-person union unlike any other in its importance to the committed individuals, marriage safeguards children and families, and it is a keystone of social order. Justice Kennedy wrote that while the Constitution contemplates that democracy is the appropriate process for change, individuals who are harmed need not await legislative action before asserting a fundamental right.
The Dissenting Opinions

Chief Justice Roberts, Justice Scalia, Justice Thomas, and Justice Alito wrote dissenting opinions.

Chief Justice Roberts
Chief Justice Roberts stated that the question before the Court in Obergefell is who defines marriage for legal purposes: the courts or the legislature. In Chief Justice Robert’s view, the definition of “marriage” concerns social policy issues that should be left to the legislature, and the Constitution does not require recognition of same-sex marriage.

Justice Scalia
Justice Scalia went further in his dissent, asserting that the action of the Court is effectively a “judicial Putsch,” with the Court usurping the authority of the people.

Justice Thomas
Justice Thomas argued that the majority interpreted the Constitution’s protection of “liberty” far too broadly. From a historical perspective, “liberty” is more narrowly defined as the freedom from physical restraint or from governmental action and not as a right to a state-issued marriage certificate.

Justice Alito
Justice Alito criticized the majority for adopting a new “fundamental purpose” of marriage, namely the personal fulfillment of married persons, over the traditional view that marriage has value because it creates a stable, potentially procreative unit. According to Justice Alito, the federalist system was designed to protect disagreements between the states on same-sex marriage and to leave settlement of the disagreements to the democratic process.

Impact on Employee Benefit Plans

The recognition of same-sex marriages across the country will offer greater clarity for employers as they administer their employee benefit plans. Since the 2013 Supreme Court decision in United States v. Windsor, same-sex spouses have been recognized for federal tax purposes and in the federal government’s regulation of benefit plans, but until the Obergefell decision, state insurance departments, state taxing authorities, and state domestic relations courts were not required to recognize same-sex marriage.

Given the magnitude of this decision, at this early date, we can only identify risks and issues for employers to consider. Employers considering immediate changes in their benefit plans may want to proceed cautiously and wait for guidance from the states and the federal government.

Here are some of the possible impacts of Obergefell on employee benefit plans:

- State insurance laws may require insurance carriers to offer same-sex spouses the same coverage and benefits that they offer to opposite-sex spouses. For example, insurance policies that offer medical coverage for opposite-sex spouses may include same-sex spouses, and insurance policies that offer supplemental life insurance coverage for opposite-sex spouses may offer the same supplemental coverage to same-sex spouses.
A self-funded medical plan that is not subject to state insurance laws, but is subject to non-discrimination laws, may be required to cover same-sex spouses if the plan covers opposite-sex spouses.

States will probably permit same-sex spouses to file domestic relationship proceedings. Same-sex spouses would then be able to obtain Qualified Domestic Relations Orders assigning portions of retirement plan accounts to current or former spouses or to the children of the same-sex marriage.

Same-sex couples will be able to adopt children as couples (instead of one or the other adopting individually), so benefit plans that provide coverage to adopted children of an employee will cover the children of the family.

State laws regarding administration of estates and establishing default heirs will probably recognize same-sex spouses. This will affect the beneficiaries of plan benefits in plans that incorporate state law.

Children of a same-sex spouse probably will be step-children of the employee and entitled to benefits offered to step-children.

States will probably give the same tax treatment to employee benefits of same-sex spouses and opposite-sex spouses, so state and federal tax law will align.

State-conferred benefits for spouses may be extended to same-sex spouses.

An employer may rescind domestic partner benefits for same-sex couples who are not married, especially if the employer provides domestic partner benefits only to same-sex couples, but not to opposite-sex couples. Obergefell does not require recognition of domestic partner relationships. Some large employers have given employees a transition period to marry their same-sex partner or lose health coverage for the domestic partner.