Keys to Complying with the U.S. Supreme Court’s Same-Sex Marriage Ruling

The recent landmark ruling that all 50 states must permit same-sex marriages will have wide-ranging implications for employers. In many ways, the ruling provides welcome uniformity that is good for the employer community. Employers no longer need to track a constantly changing patchwork of state laws in this area. However, employers will need to make sure their policies and procedures comply with the ruling.

**Constitutional protection**
In Obergefell v. Hodges, several groups of same-sex couples sued their respective state agencies and state actors in Ohio, Michigan, Kentucky, and Tennessee to challenge the constitutionality of their bans.
3. Marriage “safeguards children and families.”
4. Marriage is the “keystone to social order.”

The Supreme Court also found that marriage prohibitions enforced by the states are unequal. In addition, the majority held that religions and their adherents “may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned. The First Amendment guarantees as much. The Constitution, however, does not permit the state to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex.”

Implications for employers
An individual’s marital status is a trigger for all types of workplace benefits and could affect retirement and health care plans, Social
Security benefits, tax status, adoption, citizenship, and health care decisions. As a result, the Supreme Court’s decision will affect the application of certain employment-related laws for employers. As an initial matter, employers should review their employee handbooks, which include benefits and leave policies, to ensure compliance with the Supreme Court’s decision. For example, the Family and Medical Leave Act of 1993 (FMLA) requires private employers who have employed at least 50 employees on each working day during at least 20 calendar weeks in the current or preceding calendar year to grant qualifying employees time off to care for their sick spouses. Obergefell will provide clarity and consistency to FMLA administration. Earlier this year, the Department of Labor (DOL) issued a Final Rule revising the regulatory definition of spouse under the FMLA. It established that a spousal relationship for purposes of FMLA is based on the law of the place in which the marriage was entered into (“place of celebration”), as opposed to the old FMLA regulations basing the spousal relationship on the law of the state in which the employee resides. Employers should review and make changes to policies and practices to ensure FMLA is applied consistently with the DOL’s Final Rule.

Next, the IRS and DOL issued guidance in 2013 providing that same-sex spouse marriages would be recognized for purposes of the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA) if they were legally recognized in the state where the marriage was celebrated. Thus, the federal law protections of the IRC and ERISA were extended to same-sex spouses, even if the couples lived in a state that did not recognize or even banned same-sex marriage. However, state income tax laws that impact benefits were not affected by the 2013 guidance. Following Obergefell, states must recognize same-sex marriages that were legally recognized in the state where the marriage was celebrated — which will include same-sex marriages celebrated in all 50 states — for purposes of state income tax laws. Accordingly, employees will no longer be required to recognize imputed income on the value of same-sex health coverage for state income tax purposes.

Finally, “spousal privilege” protects the content of confidential communications between spouses during their marriage from testimonial disclosure. In federal proceedings (e.g., depositions and trials), this privilege will now include the confidential communications of legally married same-sex partners. Employers should keep this in mind with respect to any ongoing litigation or other legal claims.

ADP® has the people and expertise necessary to handle inquiries regarding the Supreme Court’s decision and its many implications for the workplace.