U.S. SUPREME COURT RULES DEFENSE OF MARRIAGE ACT UNCONSTITUTIONAL

June 27, 2013: In a decision that has broad consequences for employers, the U.S. Supreme Court (the Court) ruled that part of the Defense of Marriage Act (DOMA) is unconstitutional. Specifically, the Court ruled that by seeking to injure same-sex spouses that state law seeks to protect, DOMA violates basic due process and equal protection principles applicable to the federal government. This means that the federal government will be required to respect state same-sex marriages and accord those marriages the same benefits and obligations of opposite-sex marriages, and that employers and plan sponsors, especially in states that recognize same-sex marriage, must revisit and reevaluate how their policies and health insurance plans address same-sex spouses.

The Decision

On Wednesday, June 26, the Court released a landmark decision regarding DOMA (United States v. Windsor). DOMA is a federal law that, among other things, prohibited federal recognition of same-sex couples who married legally under state law. Specifically, Section 3 of DOMA defined, for federal laws in which marital or spousal status is addressed, the word “marriage” to mean only a legal union between one man and one woman as husband and wife, and the word “spouse” only refers to a person of the opposite sex who is a husband or wife. Since DOMA limited the definition of “marriage” and “spouse” under many federal laws to only opposite-sex couples, the legal protections and preferential tax treatment available to same-sex couples in states that recognize same-sex marriage were not applicable under federal law. At present, 12 states (Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington) and the District of Columbia have laws that recognize same-sex marriage.

In reaching its decision, the majority of the Court recognized that “the Federal Government, through our history, had deferred to state law policy decisions with respect to domestic relations.” Concerning DOMA, the Court specifically ruled DOMA violated basic due process and equal protection principles applicable to the federal government. The Court noted that "DOMA’s unusual deviation from the tradition of recognizing and accepting state definitions of marriage here operates to deprive same-sex couples of the benefits and responsibilities that come with federal recognition of their marriages." The Court observed that over 1,000 statutes and numerous federal regulations are affected by DOMA, including those pertaining to Social Security, housing, taxes, criminal sanctions, copyright and veteran’s benefits. The Court specifically mentions that DOMA raises the cost of healthcare for families by taxing health benefits provided by employers to their workers’ same-sex spouses.

In an unrelated case, the Court also issued its ruling regarding California’s Proposition 8 (Hollingsworth v. Perry). Proposition 8 is a voter-approved California state constitution change enacted in 2008 that banned same-sex marriage. In Hollingsworth, the Court, also by a vote of 5-4, ruled that the appellate court did not have jurisdiction to consider a challenge to Proposition 8, which in effect clears the way for same-sex marriage in California.

What It Means to Employers

ADP has begun assessing the impact of the Court’s rulings on federal laws, including the Consolidated Omnibus Budget Reconciliation Act (COBRA), the Family and Medical Leave Act (FMLA) and the Internal Revenue Code (IRC), among others. In the near term, employers and plan sponsors should review their policies and benefits plans based on the Court’s DOMA opinion. Since the Court found DOMA unconstitutional, in those states that recognize same-sex marriages, employees in same-sex marriages cannot be treated differently than employees in opposite-sex marriage for federal law purposes (they are already treated the same for state law purposes) because the term “spouse” for purposes of any federal law or regulation (including COBRA, ERISA, FMLA, the IRC, etc.) is no longer limited by federal law to an opposite-sex spouse.

The impact of the ruling may be very broad, potentially affecting hundreds of laws and regulations upon which payroll, HR, and employee benefits systems are based. Additionally, its full effect may not be clear until the various federal and state regulatory authorities issue revised guidance. Here are just three examples that demonstrate how the Court’s ruling will reinterpret well-known, and well-established, federal laws:

HR. Payroll. Benefits.
• Consolidated Omnibus Budget Reconciliation Act (COBRA).
  Under COBRA, group health plans must provide continuation coverage to “qualified beneficiaries” which includes spouses. Plans generally are not required to provide independent COBRA continuation coverage to an employee’s same-sex spouse, or to the child of a same-sex spouse. The invalidation of Section 3 of DOMA means that plans will be required to offer continuation coverage at a minimum to same-sex spouses in states that recognize same-sex marriage.

• Family and Medical Leave Act (FMLA).
  Under FMLA, employees are entitled to take FMLA leave in order to care for a spouse if the employee meets all other FMLA leave requirements. The decision in Windsor finding Section 3 of DOMA unconstitutional means that an employee, who resides in a state that recognizes same-sex marriage, is entitled to take FMLA leave to care for a same-sex spouse.

• Internal Revenue Code (IRC).
  Under the IRC, employees generally receive preferential tax treatment with respect to employer-sponsored benefits plans. The Windsor ruling that Section 3 of DOMA unconstitutional means that same-sex spouses should be eligible for tax-free benefits paid for by the employer, such as health, dental and vision benefits, as well as FSA, HRA and HSA reimbursements, even if the same-sex spouse does not qualify as an employee’s federal tax dependent.

In addition, the Court’s ruling suggests that employers no longer are required to impute as additional income to an employee the value of employer-sponsored and paid healthcare coverage, and employers are not subject to the related payroll tax costs for that imputed income.

Employers should continue to monitor DOMA-related developments, track their state laws concerning same-sex marriage and work with trusted advisors who can provide them with the latest, up-to-date information on new developments and assist them in remaining compliant with the law. A critical question for employers, for example, is the extent to which the decision might have retroactive effect. The decision could conceivably result in requirements to amend employment tax returns for 2013 and even prior years for employees who are same-sex spouses in the affected states. ADP will be working closely with the IRS and state taxing authorities to assess the impact.

To view the full Court decision, please visit: http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf

As the trusted business partner to hundreds of thousands of organizations of all sizes and types, ADP is committed to helping businesses and other employers understand and address tax, HR and employee benefits law changes that will follow from the Court’s opinions moving forward. ADP will advise its clients and continue to share legislative updates through Eye on Washington.

ADP Compliance Resources
ADP maintains a staff of dedicated professionals who carefully monitor federal and state legislative and regulatory measures affecting human resource, payroll, tax and benefits administration, and help ensure that ADP systems are updated as relevant laws evolve. For the latest on how federal and state tax law changes may impact your business, visit the ADP Eye on Washington Web page located at www.adp.com/regulatorynews.