

December 28, 2015

IRS Guidance Addresses Same-Sex Spouses Issues

The IRS has issued [Notice 2015-86](#), *Application of Obergefell to Qualified Retirement Plans and Health and Welfare Plans*. This Notice is intended to provide guidance on how the “Obergefell v. Hodges” (referred to as “Obergefell”) verdict may impact both employer-sponsored qualified retirement plans and health and welfare plans (including cafeteria plans under IRS Code §125). The Obergefell decision, issued in June 2015, essentially legalized same-sex marriage in all 50 states. For more information on the “Obergefell” case, please see our [Update](#).

While Notice 2015-86 address both health and welfare plans and qualified retiree plans, this update will focus on the guidance applicable to health and welfare plans. Three questions and answers in the Notice apply to health and welfare plans, clarifying the following:

- Obergefell does not require a plan sponsor of a health and welfare plan to change the terms or operation of its plan with respect to offering coverage to spouses of participants, but when a health and welfare plan does offer benefits to spouses, plan design changes must be reflected in formal plan amendments. While the guidance confirms that Obergefell does not require employer-sponsored health and welfare plans to cover same-sex spouses, federal discrimination laws such as Title VII should be taken into account. Plan sponsors are advised to consult with legal counsel before crafting eligibility provisions that treat employees differently based on the sex of their spouse.
- A cafeteria plan that allows for midyear participant election changes due to a significant improvement in coverage, may permit a participant to revoke an existing election and submit a new election midyear, if the terms of the plan were changed midyear to include coverage for same-sex spouses. The guidance clarifies that the midyear change may be to add the same-sex spouse to a benefit option in which the participant is already enrolled, or a change to enroll the employee and same-sex spouse if the employee was not previously enrolled in the plan.
- Cafeteria plans that do not allow midyear changes due to a significant improvement in coverage may amend the cafeteria plan to add this midyear change event. This amendment would support a plan’s midyear change to include same-sex spouses under the plan’s eligibility terms and a participant’s corresponding election to add a same-sex spouse midyear (with the benefit of pre-tax employee contributions, if applicable). The guidance provides that the amendment must be adopted no later than the last day of the plan year including the later of (i) the date same-sex spouses first became eligible for coverage under the plan, or (ii) December 9, 2015, and the amendment may be retroactive to the

date same-sex spouses first became eligible for coverage under the plan.

Plan sponsors who made plan changes because of the Obergefell decision should be sure their plan eligibility terms and cafeteria plans, if applicable, are updated as needed.

Should you have questions, please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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