CONNER STRONG & BUCKELEW

July 8, 2015

Same-Sex Marriage Now Legal in All 50 States

In a historic decision late June, the U.S. Supreme Court ruled that state laws prohibiting same-sex marriages are unconstitutional, thereby legalizing same-sex marriage in all 50 states. The verdict of "Obergefell v. Hodges," the name of the case from which the June 26, 2015 decision arose, overturned same-sex marriage bans in Kentucky, Michigan, Ohio and Tennessee; four states of thirteen that had same-sex marriage bans prior to the ruling. While these four states were cited in the case, the laws in all thirteen states that ban same-sex marriage are now essentially overturned by the Supreme Court's ruling. The Court's decision means that same-sex couples have a constitutional right to marry and same-sex marriages performed in one state must be recognized by other states. Under this ruling, same-sex married couples have the same rights, benefits and obligations awarded to opposite-sex married couples under both federal and state law. The decision is effective immediately and states that had bans previously, are now issuing same-sex marriage licenses. While the ruling was initially met with opposition in some states, it now appears that all states will uphold the Supreme Court's decision.

The Road that Led to this Ruling

Two years ago in July of 2013, the Supreme Court struck down a key provision of the Defense of Marriage Act (DOMA), which stated that a marriage was between one man and one woman under federal law. Following the DOMA decision, many states began to allow same-sex marriages as a result of state legal battles that challenged the constitutionality of state bans on same-sex marriage. Before the DOMA decision, nearly a quarter of the states in the U.S. permitted same-sex marriages. Post the DOMA decision and before the recent decision to legalize same-sex marriages nationwide, thirty seven states and the District of Columbia permitted same-sex marriages.

The Supreme Court's ruling was sought after the November 16, 2014 ruling from the 6th Circuit Court of Appeals. The 6th Circuit Court concluded that the decision to allow or prohibit same-sex marriages should be determined at the state level, upholding state bans on same-sex marriages in Michigan, Ohio, Tennessee and Kentucky. Because the 6th Circuit Court ruling went against rulings from other federal appeals courts, the case went to the Supreme Court to resolve the conflict.

Impact of the Supreme Court's Decision on Employer Benefit Plans

Plan Eligibility and the Definition of "Spouse" – Similar to the analysis that many employer's made after the DOMA decision of 2013, employer's may have to closely examine their eligibility definition and benefit offerings based on this latest ruling. Specifically, employers that offer coverage to spouses will likely have to review the plan's definition of "spouse." It's important to note that the legality of same-sex marriage in all states does not require employers to offer benefits to same-sex married couples. Plan sponsors generally determine eligibility parameters for their benefit plans and by design, can exclude coverage for all spouses, whether same or opposite sex. However, plans that completely exclude spousal benefits are the minority, so most employers will have to consider how same-sex married couples are handled under their plan currently, and determine if the new ruling will require prospective plan changes.

While many employers who offer spousal coverage made changes to their plan's eligibility and benefit offerings after the DOMA ruling, employers operating in states that historically did not permit same-sex marriages and self-insured employers not subject to state insurance laws, may have decided to retain the traditional definition of "spouse" under their plans as a person of the opposite sex.

A plan's funding mechanism (that is, whether benefits are fully insured or self-insured), the state law in place prior to the ruling related to same-sex marriages and other partnerships (domestic partners, civil unions, etc.), as well as the current treatment of same-sex spouses under the employer's plan may impact an employer's analysis and decisions with regard to "next steps."

Employers that do not currently offer same-sex spouse coverage, but offer coverage to opposite-sex spouses – For benefits that are fully insured, it is likely that insurance contracts in states that did not previously permit same-sex marriages prior to this ruling will be updated as required to provide same-sex spouses the same benefits as opposite-sex spouses. Because fully insured contracts are required to comply with state insurance law, plan sponsors of fully insured benefits will be directly impacted by their insurer's adherence to state law. Insurance contracts will likely recognize marriages of both same- and opposite-sex couples. Self-insured plan sponsors that are not required to comply with state insurance laws, must still be thoughtful when reviewing plan eligibility and the plan's definition of "spouse." The state insurance law exemption may not protect self-insured plan sponsors who offer spousal benefits to only opposite-sex spouses from discrimination claims.

Employers that continue to offer spouse benefits, but limit benefits to only opposite sex spouses, may be at increased risk of claims of discrimination. Title VII of the Civil Rights Act generally prohibit employment discrimination with respect to compensation, terms, conditions or privileges of employment because of race, color, religion, sex or national origin. The EEOC also recently announced that lesbian, gay, bisexual, and transgender individuals may bring valid sex discrimination in employment claims under Title VII. Plans that provide benefits for opposite-sex spouses, but exclude same-sex spouses, may increase the risk of legal challenges.

Employer's updating their plan's definition of "spouse" may need to amend their plan materials (plan document, SPD, enrollment materials, employee handbooks, etc.) to reflect the updated definition of spouse. When applicable, employers should consult with their insurance carrier, TPA and stop loss carrier as required to confirm that all contract provisions align with their plan's definition of "spouse."

Employers who currently offer same-sex spousal coverage – Employers who currently offer benefits to same-sex spouses may have little to do in light of the new ruling. Plan sponsors with fully insured benefits (subject to state insurance laws), in states that permitted same-sex marriages prior to the latest ruling, contract provisions likely already define spouse to include both same- and opposite-sex spouses. Similarly, self-insured plan sponsors who offer spousal benefits to both same- and opposite-sex spouses should have an eligibility definition that supports their definition of "spouse". Plan sponsors should ensure their plan's eligibility definition, including the definition of "spouse", aligns with the insurance carrier, TPA and stop loss contracts, as applicable.

Employers who offer benefits to domestic partners, civil unions, and other "partners" – Many employers offer coverage to other same-sex and/or opposite-sex couples, such as domestic or civil union partners, either to comply with state law or by design. The Supreme Court's ruling does not impact state "partner" laws, and employers with fully-insured contracts in states with such laws will continue to be indirectly subject to such laws, since the insurance contract in that state must comply with such laws, unless or until the state makes changes. Employers that offer "partner" benefits by design may wish to re-examine plan eligibility based on the legalization of same-sex marriages across the country. Keep in mind that the tax favorability of benefits continues to apply to spouses only. Couples in partnerships that are not marriages under state law may still be subject to state and federal imputed income rules.

Taxability on Benefits – The 2013 DOMA decision provided that employees would no longer have to pay federal income taxes on the income imputed for an employer's contribution to a same-sex spouse's medical, dental, or vision coverage and employees can pay for same-sex spouse benefits on a pre-tax basis under a section 125 cafeteria plan. State tax law is likely to follow this directive in light of the Supreme Court's ruling, but additional guidance is expected regarding state tax treatment.

Other Considerations – In addition to examining eligibility, benefits and the definitions of "spouse" and other covered partners, plan sponsors may also consider the following:

- State laws that include provisions/considerations for opposite-sex married couples will expand to include same-sex married couples. For example, state leave laws will apply to same-sex married couples now, in the same way that such laws apply to opposite-sex married couples.
- Ancillary benefits, such as group life insurance, AD&D coverage and the like, may be impacted by the recent decision, and changes that expand coverage offerings and subsequently impact premium, may occur to these types of policies.
- Employers may immediately receive questions from employees regarding how their employer's policy is impacted by the Supreme Court's ruling. While employers may not be able to advise yet on the implications of state taxability rules, employers may have to make fairly quick decisions related to their benefit offerings and eligibility definition to address/clarify how the plan handles same-sex married couples.
- Employers that make changes to their eligibility definition must update plan documentation and communication materials and all eligibility changes should be communicated to employees.

Conner Strong & Buckelew will continue to provide information on this topic as it becomes available. 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.