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Defense of Marriage Act (DOMA) - Impact on Benefits

The federal Defense of Marriage Act (DOMA) provides that for all purposes of federal law, such as the Employee Retirement Income Security Act (ERISA) and the federal tax code, the word “marriage” means “only a legal union between one man and one woman as husband and wife” and the word “spouse” refers “only to a person of the opposite sex who is a husband or wife.” DOMA is a federal law, not a state law. In some states, same-sex marriage is currently legal (such as in Massachusetts, New Hampshire, Connecticut, Iowa and Vermont). California recognizes same-sex marriages performed in the state between June 17 and Nov. 4, 2008. The federal DOMA provides that no state will be required to recognize a same-sex relationship that is considered a legal marriage in another state (although some states, like New York, recognize same-sex marriages performed lawfully elsewhere).

Under DOMA, pensions and welfare benefits regulated by ERISA cannot be required to provide benefits to a same-sex spouse, and same-sex spouses are not eligible for Social Security benefits. Several court cases have challenged the constitutionality of DOMA on the grounds that it violates same-sex couples' equal protection rights and interferes with states' rights to determine valid marriages. Recently the U.S. Department of Justice (DOJ) has announced that it will no longer defend Section 3 of DOMA which excludes lawfully married same-sex couples from the federal definition of marriage. Both the DOJ and President Obama have determined that Section 3 of DOMA is a violation of the equal protection rights offered under the Fifth Amendment when applied to same-sex couples who are legally married under state law; and that DOMA is, therefore, unconstitutional.

It is important to note that despite this decision not to defend DOMA in certain cases, DOMA remains intact and will continue to be enforced by the Executive Branch. President Obama has instructed the agencies of the federal government (e.g., IRS, DOL, and HHS) to continue to comply with and enforce the DOMA provision defining marriage and spouse unless and until Congress repeals Section 3, or until the judicial branch renders a definitive verdict against the law's constitutionality.

Impact on Benefits

The DOJ announcement has generated questions from plan participants about its effect on benefits for same-sex spouses. Until Congress issues a repeal of the DOMA guidelines or the Judicial Branch provides a definitive decision about its constitutionality, DOMA will continue to be enforced in the administration of benefits to participants, and spousal pre-tax benefits will only be available to married couples as defined under DOMA.

So for now, federal laws and regulations (including ERISA and the tax code) that use the terms “marriage” and “spouse” and limit their application to opposite-sex partners are still in force and will continue to be enforced until such time as DOMA is repealed by Congress or declared unconstitutional by the U.S. Supreme Court. The DOJ announcement specifically references “legally married same-sex couples,” which means that—at least for now—state law determines who can marry whom. Any repeal of DOMA would presumably once again cause federal law to defer to state law determinations of otherwise valid marriages.

The question of whether DOMA is valid is significant for welfare benefit purposes, given the federal tax implications for benefits provided to same-sex spouses and the impact DOMA has on other benefit rules (including, among others, whether same-sex spouses have COBRA and HIPAA special enrollment rights). For example, if DOMA were repealed, federal laws governing employee benefit plans would likely require employers to treat employees’ same-sex and opposite-sex spouses equally for purposes of the benefits that the employer extends to spouses. For example, in the welfare plan context, items such as the federal income tax treatment of health coverage for an employee’s same-sex spouse would change such that employees would no longer have to be taxed on the income imputed for the employer’s contribution to the same-sex spouse’s coverage, and COBRA continuation would be required to be offered to same-sex spouses.

Employers would also be required to permit employees to take family and medical leave to care for the illness of a same-sex spouse.

Employers should continue to watch for any additional developments relating to federal guidance on DOMA. In the interim, if you have any questions about the recent DOJ announcement on DOMA and its affect on welfare benefits, contact your Conner Strong account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong, visit our online [Resource Center](#).



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