



Compliance Alert

Supreme Court to Rule on Same-sex Marriage

January 30, 2015

Quick Facts:

- On January 16, 2015, the U.S. Supreme Court agreed to hear four cases challenging bans on same-sex marriage.
- Currently, 36 states and the District of Columbia allow same-sex marriage.
- The Supreme Court is expected to hear oral arguments in April 2015.
- The Supreme Court's decision is expected to be issued before its current term ends in late June 2015.

On January 16, 2015, the U.S. Supreme Court agreed to hear appeals in same-sex marriage cases from Ohio, Tennessee, Michigan and Kentucky. The Supreme Court will take on the issue of whether same-sex couples have a constitutional right to marry or whether states are permitted to ban gay marriage.

In its review, the Supreme Court will focus on a decision by the U.S. 6th Circuit Court of Appeals that upheld bans on same-sex marriage in Ohio, Tennessee, Michigan and Kentucky. These four states are among the 14 states that still have bans on same-sex marriage. Currently, same-sex marriage is available in 36 states and the District of Columbia.

The Supreme Court is expected to hear oral arguments in late April 2015. The Supreme Court's ruling is expected to be issued in the summer, most likely in late June 2015.

Overview of recent same-sex marriage decisions

In June 2013 the Supreme Court ruled that Section 3 of the federal Defense of Marriage Act (DOMA) – which barred federal recognition of same-sex marriage – was unconstitutional.

However, the Court did not address Section 2 of DOMA, which allows states to refuse to recognize same-sex marriages from other jurisdictions. Section 2 was not affected by the ruling, and this section of the law currently remains in effect. Since then, a number of courts have addressed whether state laws prohibiting same-sex marriage are permissible. So far, five out of the 13 federal appeals courts have issued decisions on same-sex marriage bans.

State laws prohibiting same-sex marriage have been invalidated by the 4th Circuit, 7th Circuit, 9th Circuit and 10th Circuit.



On November 6, 2014, the 6th Circuit upheld state bans on same-sex marriage. The 6th Circuit ruled that the same-sex marriage issue should be decided in each state through the regular political process and not through the court system. The 6th Circuit's decision conflicts with the decisions from the other appeals courts, which created a split between the federal appeals courts on the same-sex marriage issue.

In October 2014, before the 6th Circuit's decision was issued, the Supreme Court declined to hear appeals in the other same-sex marriage cases. Supreme Court Justice Ruth Bader Ginsburg indicated that the main reason the Supreme Court decided not to review the same-sex marriage issue was that there was not a split in decisions among the federal appeals courts at that time.

Impact of Supreme Court ruling

By taking on the same-sex marriage issue, the Supreme Court will likely resolve the split in decisions between the federal appeals courts. In what will be a landmark decision, the Supreme Court is expected to decide whether the U.S. Constitution gives same-sex couples across the country the right to marry. The Supreme Court has indicated that it will rule on two specific issues – the power of the states to ban same-sex marriages, and the power of the states to refuse to recognize same-sex marriages performed in other states.

The Supreme Court's opinion has the potential to impact the legality of same-sex marriages throughout the United States, either by legalizing gay marriage or by overturning court decisions that have invalidated state bans on same-sex marriage.

ERISA implications

Employers should continue to monitor legal developments involving same-sex marriage and possible impacts on their benefit plans. A Supreme Court decision legalizing same-sex marriages throughout the United States would decrease the administrative burdens on employers regarding benefits and payroll because they will no longer need to differentiate between the different state laws regarding marriage. It is unclear if a Supreme Court decision upholding the power of states to states to ban or refuse to recognize same-sex marriages would invalidate the many same-sex marriages that continue to take place.

There is no legal requirement that says that an employer-sponsored health plan has to offer insurance to any spouses of employees, whether same-sex or opposite-sex. But if the plan documentation provides that "spouses," are eligible without defining "spouse" or calling out same-sex spouses or opposite-sex spouses, there could be an argument that same-sex spouses are covered under the plan based on federal law.

For plans not subject to ERISA – such as government plans and "church plans" – certain matters are likely dependent on the laws of the state in which the employer operates or the employee resides.



While employers with self-insured plans are generally permitted to define eligibility, insured plans are regulated by state law. Policies issued in states that recognize same-sex marriage may not be permitted to differentiate between same and opposite-sex married couples.

Potential discrimination exposure

Employers should consider whether such exclusion may constitute discrimination against protected groups. For example, federal law prohibits discrimination based on gender, among other status groups. Excluding same-sex spouses from benefits could cause them to fall into a protected class. This could lead to legal problems – even if state laws do not prohibit discrimination based on sexual orientation.

Next steps for employers

Employers should review their leave of absence policies, employee communications, SPDs, plan documents, and forms to reflect the DOL’s guidelines and the employer’s intent with respect to same-sex spouse benefits. For example, a document may refer to “spouse” without any limitation as to the definition, and spousal rights may be unintentionally granted to same-sex spouses. Alternatively, documents contain references to “opposite-sex” spouses may conflict with insurance laws, federal laws, and or the employer’s own policy with respect to same-sex spouses.

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For further information on this or any other topics, please contact your EPIC benefits consulting team.

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