

# update

Compliance News for Multiemployer Plans

July 1, 2015

## U.S. Supreme Court Decision on Same-Gender Marriage

On June 26, 2015, the U.S. Supreme Court announced its decision in *Obergefell v. Hodges*. This *Update* summarizes the decision and its implications for sponsors of benefit plans.

### The Decision

In a 5-4 decision, the Court ruled that the U.S. Constitution requires all states to issue marriage licenses to same-gender couples on the same terms and conditions that apply to opposite-gender couples, and to recognize same-gender marriages entered into in other states.

Justice Kennedy wrote the majority opinion, in which Justices Ginsburg, Breyer, Sotomayor and Kagan joined.<sup>1</sup> In essence, the Court ruled that the constitutionally-protected fundamental right to marry applies with equal force to same-gender couples.<sup>2</sup> Four justices (Chief Justice Roberts and Justices Scalia, Thomas and Alito) wrote dissenting opinions.

### Implications for Group Health Plans

This ruling will make it easier to administer health coverage provided to same-gender spouses because it eliminates the need to impute income for *state* income tax purposes under the laws of some states. As a result of the Court's 2013 decision in *United States v. Windsor*,<sup>3</sup> plan sponsors stopped imputing income for *federal* tax purposes for coverage provided to same-gender spouses. However, in some states, plan sponsors still had to impute income for *state* tax purposes. The decision in *Obergefell* eliminates this extra step in those states where this is currently required. Plan sponsors should consult with legal counsel about when to stop imputing income, as the effective date for this change could vary by state.

Plan sponsors that currently offer health coverage to opposite-gender spouses but not to same-gender spouses should review that policy with legal counsel. Although the Employee Retirement Income Security Act (ERISA) itself may not require that health coverage be offered to same-gender spouses, state and potentially federal anti-discrimination laws may.



### Judicial Decision:

- The Decision
- Implications for Group Health Plans
- Implications for Retirement Plans

**NEW!** On December 9, 2015, the Internal Revenue Service released [Notice 2015-86](#), which provides guidance on how the U.S. Supreme Court's decision in *Obergefell v. Hodges* affects benefit plans, including retirement plans. The Notice confirms that tax-qualified retirement plans are not required to make any amendments as a result of *Obergefell*.

<sup>1</sup> The [decision](#) is on the U.S. Supreme Court's website.

<sup>2</sup> The *Obergefell* decision has no impact on the current treatment of domestic partners or civil union partners. It applies only to the availability and recognition of legal marriage for same-gender couples. Domestic partners cannot be treated in the same manner as same-gender spouses for purposes of federal tax laws.

<sup>3</sup> That decision was discussed in Segal's July 2013 *Bulletin*, "[What the U.S. Supreme Court's DOMA Decision Means for Benefit Plans](#)."

## Implications for Retirement Plans

The *Windsor* decision and the guidance issued afterward settled most issues for retirement plans subject to federal law. Under federal tax laws, same-gender spouses must be treated the same as opposite-gender spouses. The main consequence of the *Obergefell* decision will likely be an increase in the number of married participants generally, and costs associated with such an increase would generally be expected to be minimal.

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